Volume XLVII] *December, 1932* [*Number 4*

POLITICAL SCIENCE QUARTERLY

THE LEAGUE IN RELATION TO THE WORLD CRISIS *

SCIENCE is an effort to render intelligible to the human mind the complexities of the universe. It is an attempt at putting mankind's apparently chaotic house in order. Professors, whose job it is to promote science, are therefore necessarily pedants. Most of them are unconscious pedants, some deliberate pedants. It is to this latter species of the academic tribe that my natural, but perhaps exaggerated pride, leads me to believe that I belong.

When called upon to discuss the League of Nations in relation to the world crisis, my first concern was therefore clearly to define in my own mind the two terms of my topic. Surprising as it may seem, it is far easier to circumscribe the crisis, which I intend to consider only in its economic aspects and its political background, than to determine exactly what is meant by the League of Nations.

For most visitors to Geneva, at least on a first visit, the League is Geneva. The Secretariat, the Labour Office, the Council, the Assembly, the Commissions, perhaps also the Court at The Hague, are the League. This view is assuredly superficial. Geneva is in fact no more and no less the League than Washington is the United States or London the British Empire.

When, having more closely examined the working of the League of Nations, we come to realize that only its visible machinery, but not its whole structure, is in Geneva, we may, in our efforts to define it, be led to the opposite extreme. As

* A paper read before the Geneva Institute of International Relations on August 17, 1932 and subsequently revised.

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the United States is not Washington but all the states united in a federal union, is not the League commensurate with the nations which compose it? This also, on reflection, I believe, would be if not an error, at least a confusion.

When we speak of the United States as being prosperous, or poor, or mighty, or dry, or wet, we mean that the whole territory governed from Washington and its inhabitants answer one of those descriptions. But when we speak of the League of Nations as being weak, or powerful, or impecunious, or timid, we certainly do not intend thus to characterize all the nations which have adhered to the Covenant. The political units of the League are not leagued as are united the states members of the United States.

What, then, is the League, if it is more than its machinery, but less than the sum total of its members? For our purposes at least, I believe we may fairly define it as *the body of institutions and principles, of national policies and of methods of international intercourse which were set up and adopted when the nations decided to frame and to adhere to the Covenant.* These institutions, principles, policies and methods are constantly being developed by the coöperation within the League of the states its members.

Our problem is to consider the League of Nations so understood in the stress of the present world crisis. We are not concerned merely with the relations of the crisis and the machinery of the League, nor are we here at all concerned with the relations between the crisis and the welfare and general policy of the nations of the world. We intend to examine how the crisis has affected the League of Nations which came into being in 1920, and how that novel creation has reacted or sought to react upon the crisis.

So much for the League. Now what about the world crisis? I have stated that, as far as definitions are concerned, it presents far less difficulties than the League. The present world crisis, which we all have in mind and which has so completely and for economists so humiliatingly baffled all attempts at explanation, is that historical event which, since the close of 1929, has impoverished a world equipped to produce and

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eager to enjoy plenty. Its main characteristics are a fall in wholesale prices, a reduction in most individual incomes, a slowing down of most industrial enterprises, a tremendous increase in unemployment, a host of bank failures, widespread monetary, political and social disturbances, and as an international consequence, concomitant, and perhaps even cause, a general raising of trade and migration barriers and a more than corresponding shrinkage of world intercourse.

A study however summary of the relations between the League and the crisis naturally falls into two parts. We propose to consider first the action of the crisis on the League and then the attempted reactions of the League on the crisis. Of these two parts, the former has precedence over the latter not only because the crisis, breaking out in 1929 when the League was already ten years old, may be said chronologically to have struck the first blow, but also because its influence on the League has undoubtedly been much greater than that which the League has so far exercised on the crisis.

I. THE INFLUENCE OF THE CRISIS ON THE LEAGUE

When, in the autumn of 1929, the first stock-exchange panic in Wall Street announced what has since proved to be the severest economic depression in modern history, the League of Nations was serenely approaching the tenth anniversary of its birth and pursuing its normal course of progress. The outlawry of war pact had just been signed at Paris and the principle of compulsory arbitration was about to receive a new impetus by the adhesion of three Great Powers. The friends of the League were, if not elated over its successes, at least satisfied with some of its achievements, notably in the economic field, and hopeful for the future.

On closing the Tenth Assembly, on September 25, 1929, President Guerrero, of Salvador, could speak of the "atmosphere of calm and good understanding" (*détente et concorde*) in which it had met and of the "extraordinary spirit of enterprise, of boldness even" which it had shown in "launching new ideas" and "preparing a vast program of action".

One of the items of this program was the "concerted action"

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for "facilitating economic relations by all practical means and especially by reducing hindrances of trade" which the Assembly, "impressed by the importance of taking all possible steps to carry into effect the recommendations of the World Economic Conference of 1927", had, on September 3, 1929, recommended.

That a similar spirit of hopefulness and action pervaded the International Labour Organisation is shown by the following statement by which Albert Thomas summed up his impressions in his annual directorial report, on April 20, 1929:

> It is impossible to conclude this annual survey of the working of the Organisation during the past year without feeling a certain optimism. Year by year efforts have been made to build up the administrative machinery of the Organisation. It may now be said that the Organisation has, so to speak, reached that stage of smooth, easy running which is a common phenomenon with good motor-cars after they have done several thousand miles. The engine is "run in". The Conference and its groups are now working according to rules which are no longer discussed, but which are frankly accepted and easily applied. The Governing Body has clearly classified and distributed the work of its Committees. The development of the technical bodies of the League has of itself made possible a clearer division of the international work which has to be done. Even the relations between the Office and the States which are not Members of the League have now attained some sort of regularity.[1]

The long and sad story of difficulties, failures and disappointments was, however, soon to begin. Its first incident was the unusually unsuccessful international conference concerning the treatment of foreigners and foreign undertakings which met in Paris on November 5, 1929, and in which no appreciable measure of agreement was achieved. This first mishap, which cannot be said to be due to the crisis, was followed by the long and disappointing preliminary conference with a view to concerted economic action held at Geneva from February 17 to March 24, 1930. In the difficulty encountered at this conference in framing even a very loosely worded convention and especially in the impossibility of putting it into force, we may, I believe, note the first symptom of the anaemia which international relations in general and the League in

[1] League of Nations, *International Labour Conference, 12th Session: Report of the Director*, First Part, Geneva, 1929, p. 45.

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particular have contracted under the influence of the growing economic depression.

Let us note the influence of the crisis first on certain aspects of the League's administrative structure, then on some of its activities and finally on its political vitality.

1. *The Crisis and the Administrative Structure of the League*

The administrative structure of the League, as that of all other political organisms, may best be studied by an analysis of its annual budget. This budget is prepared by the officials of the Secretariat, of the Labour Office and of the Permanent Court, examined by a Supervisory Commission, discussed by the Fourth Committee of the Assembly, and finally voted by the Assembly in full session. The expenditure thus authorized is met by contributions of the states members of the League.

In order to study the impact of the crisis on the structure and on the finances of the League, we may therefore examine the proposals of the administrative authorities, the reports of the Supervisory Committee, the debates of the Fourth Committee and the decisions of the Assembly. And we may also draw some conclusions from the readiness or reluctance with which the annual contributions are paid by the states.

Until 1931, the budget, always somewhat compressed by the Supervisory Committee and then again expanded by the supplementary appropriations voted by the Assembly, was on the whole adopted with little difficulty. The contributions in arrears, it is true, were steadily increasing, rising from 7 per cent of the total budget in 1928 to 15 per cent in 1931. But as no European state and no Great Power figured among the defaulters, there was in this circumstance no more than a mild warning. The situation in China and in the smaller Latin American republics was so peculiar that ominous conclusions could hardly be drawn from their default.

At the Assembly of 1931, however, the state of mind revealed by the debates of the Fourth Committee became distinctly alarming. In the report presented to the plenary Assembly on behalf of this Committee by its Swedish rapporteur, Mr. E. C. Boehman, we read:

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The general discussion on the budget, which was particularly thorough and detailed this year, was extremely interesting. More than thirty members spoke and all except the Spanish and Lithuanian delegates advocated the reduction of the budget, laying special stress on the fact that, at a time when each State Member of the League was confronted with an extremely serious economic and financial crisis and was making every effort to reduce public expenditure, the League of Nations should adopt the same policy, the more so since the increasing amount of contributions in arrears gave rise to a certain uneasiness.[1]

The budget submitted was accordingly referred back to the Supervisory Committee and reduced by about 8 per cent. In spite of this reduction, the budget prepared for the year 1933 had again been reduced below the level not only of 1932, which was abnormally high on account of the expenses entailed by the Disarmament Conference, but even of 1931. Furthermore, on May 9, 1932, the British government submitted a memorandum to the Council, calling for an inquiry into the finances of the League and proposing economies in organization and reduction in present expenses.

In spite of the proposed reductions, which were at least partly compensated by increases resulting from the annual increments in the salary lists, the 1933 budget was again violently criticized as being intolerably heavy by the Assembly of 1932. The budget just approved provides for some immediate economies through cuts in the salaries of future officials and for a further investigation into the possibilities of concentration and rationalization of organization. The latter either means nothing or it implies the necessity for and the likelihood of reduction in numbers of the servants of the League.

The budget cuts made in 1931 led to the postponement of several projected conferences, to a reduction in traveling expenses and subsistence allowances of experts and officials, to a diminution of printing and distribution of League documents and to a lowering of those salaries which had not been fixed by contracts. The rhythm of the activities of the League has thereby been somewhat slowed down and in some cases, as in that of the control over the administration of mandated

[1] *Report of the Twelfth Ordinary Session of the Assembly: Plenary Meetings*, Geneva, 1931, Annex 9, p. 246.

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areas, its efficiency has doubtless been impaired. Should the depression persist and continue to produce the same consequences, the results would assuredly be serious.

This whole matter may be considered petty, as the sums involved when compared to the financial resources of the contributing states are infinitesimally small. At the 1931 Assembly, Señor de Madariaga stressed this point in a particularly striking way, by declaring that 5 per cent of the military expenditure of the world community, if invested at 5 per cent, would yield an income far superior to the present necessities of the League. When it is appreciated that the whole budget of the League, including the Secretariat, the Labour Office and the Permanent Court—about 30 million Swiss francs—is appreciably less than that of the Canton of Geneva, its importance will not be overestimated.

The reluctance of the national governments and parliaments of the world, harassed by the pressure of the crisis, to foot the modest bill annually presented to them by the League is, however, truly significant. Were it an indication of the value they attribute to international organization, this reluctance would indeed be fatal. It is not, in my opinion, to be thus interpreted. Rather is it due to the conviction, shared by many competent and friendly observers, that especially under present conditions, the League is overstaffed and its officials generally overpaid. Doubtless many of the ablest and most devoted officials are overworked and their ability and devotion could command at least equal remuneration in other walks of life. But the fact remains that, especially under the stress of the present crisis, no efficiently managed private concern would keep on its staff employees not a few of whom owed their appointment mainly to political considerations. And the other fact remains also, that the rate of pay which was considered high even before an exceptionally generous pension system was introduced and before salaries were reduced in many national civil services, strikes most officials of the latter as extravagant. As the instructions for the delegations to the Assembly are prepared in the offices of the national civil services and carried out by national diplomats, many of whom

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have been subjected to drastic cuts in their own salaries, it is not surprising that the cry for economy in Geneva is more and more insistently raised.

In the best interests of the League, it is therefore earnestly to be hoped that that cry be properly understood. At the Assembly of 1932, the demand for a reduced budget was again raised with even greater energy than in the past. It very happily, however, led to a reduction of personnel expenditure rather than to a curtailment of the League's activities. The accusation that the League was being sacrificed to its servants is therefore rather less founded today than a year ago.

2. *The Crisis and the Activities of the League*

The impact of the crisis on the activities of the League was both positive and negative. It developed and stimulated certain of these activities and it led to the abandonment or postponement of others. In both cases this impact was both direct and indirect. Faithful to our principles of pedantic order, we may therefore distinguish four types of influence exercised on the work of the League by the world depression.

The first type, that of activities directly promoted, we will do no more than mention here. They will be more appropriately considered in the second part of this paper as reactions of the League against the crisis. Suffice it to say that since 1930, an appreciable part of the efforts of the League itself and almost all the efforts of the International Labour Organisation have been devoted to studying the depression and combating its effects.

The second type, that of work thrust upon the League as the indirect result of the crisis, is more difficult clearly to distinguish. There is no doubt, for instance, that if the world had been prosperous in the course of the last three years instead of being increasingly impoverished, such problems as the administration of the Saar Basin, the control over Danzig, the protection of minorities and the supervision of the mandated areas, as well as the settlement of disputes between neighbors, would have appeared under different aspects.

The influence of economic conditions on the political out-

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look is a fascinating but exceedingly complex subject which cannot be discussed here. Under certain circumstances, acute distress makes for political resignation and prosperity kindles the fire of political ambition and love of change. Under other circumstances, however, acute distress makes for political radicalism and prosperity for political as well as for social contentment.

The absence of particularly violent outbreaks of revolt in the mandated territories in the recent past may well be due to lowered economic standards among the native populations, peculiarly hard hit by the glut in tropical products. The relative quiet in Palestine today, on the other hand, may also be attributed, as it is by many observers, to the surprising prosperity which that remarkable country enjoys in the midst of the general depression.

Whereas the relative political tranquillity in the Saar Basin and among most of the minorities in Eastern Europe may well be due to the prevalence of economic over political worries, it would seem that the increased German-Polish tension over Danzig, the Corridor and Upper Silesia was on the contrary to be explained by the direct and indirect effects of the depression. The crisis, which has certainly enhanced the influence of the uncompromising National Socialists in Germany and strengthened the position of the equally uncompromising dictatorship in Poland, has also added to the dissatisfaction of the inhabitants of Danzig, threatened by the competition of Gdynia not only in their political hopes, but also in their economic interests.

These considerations are, however, all more or less conjectural. In two outstanding cases, major political conflicts which have occupied the League have at least partly been clearly due to the crisis.

The first of these cases was that of the projected Austro-German customs union, which was examined and settled by the Council and the Permanent Court of International Justice in the course of 1931. The motives underlying the action of the German and of the Austrian governments were doubtless political, as were political in the eyes of its opponents the

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dangers of their undertaking. But the economic distress from which Germany and Austria were acutely suffering and the failure of other economic remedies, such as the European Union, undoubtedly supplied these governments with a pretext and an occasion which they would not have had in times of prosperity.

The other case is the Sino-Japanese conflict. Here the relation between the economic crisis and the political aggression of Japan is not quite as direct nor as obvious. Is it, however, to be either over-imaginative or unduly suspicious, to note the coincidence of the Japanese action with the economic circumstances which paralyzed the only two Great Powers who could and who, under other conditions, would doubtless have arrested it? The United States was so engrossed with its internal difficulties and Great Britain so completely benumbed by the crisis of the pound, that the occasion seemed too good to be missed for the realization of Japan's long-planned and often thwarted expansion in Manchuria. Thus the most important political conflict which has come before the League, as also the greatest blow dealt to its prestige and moral authority since its birth, were due to the crisis which, indirectly but no less decisively, led Japan to defy it and prevented the peace machinery of the Covenant from coming into effective action.

These brief notes will suffice to show, and our later summary of the attempts made from Geneva to combat the economic depression will illustrate more fully, the direct and indirect positive influence exercised by this depression on the work of the League.

Its negative influence, that is, the activities interrupted or suspended as a result of the crisis, cannot be as easily measured. On the one hand, the official reports annually presented to the Assembly are, for obvious reasons, less explicit on the work abandoned than on that accomplished. On the other hand, we are faced with the impossibility, familiar to all historians, of asserting with assurance "what would have been" under circumstances other than those which in fact obtained.

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This difficulty is greater when we endeavor to assess what we have called the direct negative influence of the crisis than when we seek to estimate its indirect consequences. By indirect consequences we mean the curtailment or postponement of League activities due to cuts in the budget adopted as a result of the depression. The report of the Supervisory Committee, which in September 1931 translated into concrete proposals the general desire of the Fourth Committee to reduce the expenditure of the League, is very enlightening in this respect.

In presenting its revised budget, the Supervisory Committee declared that

> it deals with conditions which are wholly abnormal and is adapted to a situation of worldwide financial stress... In proposing reductions of the original provisions, the Committee has had only one object in view—namely, to avoid expenditure, during the year 1932, upon work which, though approved and sanctioned by the Assembly or necessary to give effect to the policy of the Assembly, can yet, without harming the usefulness of the League, be postponed until 1933 or later.[1]

The reductions proposed and adopted without much discussion by the Assembly amounted to about two and a half million Swiss francs. Of this sum, about two thirds were economized on the Secretariat budget and one third on that of the Labour Office. Appreciable cuts were made in the amounts provided for the printing and distribution of League documents and for various administrative purposes. The main reductions were due to the suppression or postponement of the meetings of conferences, committees and subcommittees dealing with the following topics: public health, maritime labor, veterinary questions, double taxation, economic statistics, raw materials, mandates, port and maritime navigation, opium, traffic in women and children, intellectual coöperation, European Union and slavery.

On the whole, it may be noted that, as was reasonably to be expected, the secondary technical work of the League was sacrificed to its main political tasks. Although quite some

[1] *Records of the Twelfth Ordinary Session of the Assembly: Minutes of the Fourth Committee*, Geneva, 1931, Annex 6, p. 99.

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economies were effected on the budget of the Disarmament Conference, they were not due to any desire to limit its scope or its duration, but simply to the fact that, on a critical reëxamination, the first estimates had proved too generous. As was to be expected also, the major activities of the Economic and Financial Sections were not curtailed. On the contrary, the Supervisory Committee wisely noted at several points in its report that the world crisis would probably call for and justify increased efforts on the part of these organs of the League.

The most significant but also the most elusive negative effects of the crisis are likewise to be found in the economic sphere.

Ever since the World Economic Conference of 1927, the Economic Committee, the Economic Consultative Committee and the Financial Committee had been busily occupied with various preliminary studies intended to prepare for and to make possible the translation into actual policy of the recommendations of that Conference. Those recommendations had been the postulates of a liberal philosophy of international relations based on the fundamental conception of the unity of mankind. They tended to favor the development of international trade in all its forms and to overcome the obstacles which national interests, national prejudice and national routine had placed in its way. The crisis, on the contrary, everywhere led to the adoption and pursuit of national policies directly hostile to the principles and recommendations inherited by the League from the Conference of 1927. The inevitable result was to paralyze the efforts of the League.

The individuals who, as League experts in Geneva, had recommended the suppression of export and import prohibitions, the lowering of tariff barriers, the unification of customs nomenclature and the promotion of international loans, were the same as those who, in their capacity as national officials, were now fixing reduced trade contingents, raising tariff barriers and impeding the inflow of commodities and the outflow of capital. That their opinions had changed less than their point of view is obvious from the following em-

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barrassed statements extracted from the report on their activities presented to the Assembly of 1932:

It was felt very strongly that any study directed towards a better organisation of European economy must necessarily begin by an impartial examination of the present situation. Consequently, the Economic Committee studied the effects of the crises [*sic*] on the régime of international exchanges. In the course of this examination, the Committee arrived at one definite conclusion—namely, that the present situation was of such an exceptional character that it would perhaps appear premature to contemplate any plans for the future before international trade had returned to rather more normal conditions...[1]

The Economic Committee has always laid stress in the past on the necessity of securing the utmost possible freedom for trade. It is today convinced that the argument it formulated earlier has not been disproved by facts. There is little doubt that the present crisis would not have been as acute as it is if Governments could have pursued a policy more in conformity with that doctrine...[2]

In view of the importance which monetary and financial necessities have assumed since the summer of 1931 as a factor in international trade, the Economic Committee was, for the moment, unable to formulate useful suggestions for trade policy until the necessary solutions had been found in the field of international settlements and suitable alleviations and adjustments had been effected to relieve the financial tension...[3]

The Economic Committee consulted the members of the Sub-Committee of Agriculture expressly as to the expediency of a further conference. The majority of the experts expressed the view that an agricultural meeting with a general agenda could not hope to achieve satisfactory results in the present circumstances, which are ill-adapted to practical schemes on international lines. They hope that a few months hence circumstances may be more favorable...[4]

That the same cause, the world crisis, was similarly paralyzing the operation of the International Labour Organisation is shown by the following statement made by Albert Thomas in his last directorial report, dated March 1, 1932:

The fact remains... that serious as may be the psychological or political difficulties which hold some countries back from closer participation in the work of the Organisation, these difficulties are surely all in the last resort caused or aggravated by the economic depression. Perhaps it is even more

[1] *Report on the Work of the League since the Twelfth Session of the Assembly*, p. 56.

[2] *Ibid.*, p. 57.

[3] *Ibid.*, p. 58.

[4] *Ibid.*, p. 59.

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true this year than last that the economic depression has been the main hindrance to any fresh development of international labour legislation. It has caused a sort of instinctive, unreasoning reaction which has led States to withdraw into themselves. It has made them temporarily sceptical or uncertain as to the utility of internationalism.[1]

3. *The Crisis and the Political Vitality of the League*

We are thus led to consider the effects of the crisis on the political vitality of the League itself. That vitality depends on the support of public opinion the world over and more immediately on the loyalty of the states members of the League. The main purposes of the League are the prevention of war and the promotion of general prosperity. When it achieves these two purposes, its political vitality is enhanced. When it fails, it forfeits both the support of public opinion and the loyalty of its members. But it can achieve its purposes only through the loyalty of its members, on which it can count only when it is assured of the active support of public opinion.

We are therefore faced, in considering the conditions and consequences of the political vitality of the League, by a complete circle of causes and consequences. Of the League more than of all other human institutions founded primarily on human confidence, it may therefore truly be said that nothing succeeds like success.

In the course of its recent past, the League has been faced with a double opportunity and with a double responsibility. Had it shown itself willing and able to exact from its members the national sacrifices necessary for the prevention of war in the Far East and the maintenance of international solidarity under the stress of the world economic crisis, its cause would today be won and its future very bright. As, in both emergencies, however, national selfishness, prevailing over the sense of international community, has condemned the League to at least partial failure, its political vitality is therefore today at a low ebb.

The relations between the world economic crisis and the present weakness of the League are thus twofold. On the

[1] League of Nations, *International Labour Conference, 16th Session: Report of the Director*, Geneva, 1932, p. 13.

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one hand the crisis offered the League what might perhaps have been an occasion for spectacular service, but which, as the League was unable to rise to it, proved to be the occasion of a great popular disappointment. On the other hand the crisis has led national statesmen to concentrate their attention on their internal difficulties and to seek for their national ills purely national remedies at the expense of their neighbors and of the international community at large. Thus the crisis has led them to set aside the coöperative solutions which the League had recommended and to deprive it of their support, without which it can neither act nor indeed exist.

The crisis therefore has been both the occasion and one of the contributing causes of the present admitted weakness of the League of Nations.

II. THE INFLUENCE OF THE LEAGUE ON THE CRISIS

In spite of its weakness, however, the League did not submit in passive resignation to the ill-treatment it experienced at the hands of the crisis. On the contrary, it reacted against it by seeking to understand and to control the economic depression and by undertaking to combat its consequences and thereby, incidentally, to justify and to assure its own existence.

We propose, in the second part of this paper, briefly to examine the course of this reaction. Before doing so, however, we would make two brief comments on the nature of the crisis.

1. *General Observations*

In the first place and in order fully to appreciate the difficulties under which the League was laboring, it must be recalled and always borne in mind that the exact cause and character of the economic depression were and remain unknown. The antecedents and the symptoms of the disease have been analyzed and its course described by countless economists, statisticians, historians, publicists and journalists. But the true scientific diagnosis, so certain and so obvious as to be universally accepted as the basis for radical and efficacious treatment, that diagnosis has still to be made.

Our second preliminary comment is that, in the existing

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state of research, it does not seem probable that the sole fundamental cause of the crisis is such that the League could, by political means alone, overcome it. But it is absolutely certain that its gravity has been and is being greatly increased by international circumstances and could therefore be alleviated by international remedies. To make my meaning quite clear: suppose that a modern state were absolutely isolated from all its neighbors, or, what amounts to the same thing, suppose that the League of Nations were an all-inclusive world state. It is probable that economic crises like the present would not spare such a state or such a league, but it is certain that they would affect them differently and less severely. In such a hypothesis, there would be no possibility of war, no lack of confidence due to fear of international friction, no burden of armaments, and no political obstacles impeding the free flow of migrations, commodities and capital. Such a state or such a league, even if probably not crisis-proof, would undoubtedly be much less exposed to economic fluctuations and depressions than our states and our League.

What could be expected of our League was therefore not that it should prevent or overcome the world crisis, but that it should approximate, as far as possible, the conditions of political security and economic freedom of intercourse which would characterize a world state. That, as we shall note, is precisely what it sought to accomplish. That it did not and could not fully succeed must be obvious to every student of the League who realizes that it is of necessity governed by, and can act only through, the representatives of the very states whose national sovereignty would have to be sacrificed if its ideal ends were to be attained.

How, then, and through whose agency, did the League react against the crisis?

Theoretically and legally, the sole masters of the League are the politicians who happen to be in power in the states, its members. These politicians, as we have seen in the first part of this paper, disregarding the international solutions which they had themselves recommended when in Geneva, were and are, under the impact of the crisis, pursuing policies

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more and more narrowly nationalistic and therefore more and more contrary to their own recommendations and to the interests of the international community as a whole. Who then could protect the League, as we have defined it in our introduction, against the desertion and indeed the implicit hostility of its nominal governors, the national statesmen?

It is here that we discover the principal if not the official function of the permanent servants of the League in the Secretariat and in the Labour Office. To these men and women, seconded by the national civil servants and other experts who had for years been evolving so-called League policies, fell the task of navigating the ship while many of its officers were engrossed with extraneous duties and often even interfering with its normal progress. These officials and experts could, of course, act only in a consultative and persuasive capacity and, as we have seen, some of them were often themselves hampered by their national duties. Their advice, however, was sometimes taken, especially when too highly technical to be fully understood by their political masters. Furthermore the League was never without the sympathy of some national statesmen, some national parliamentarians and many organized and unorganized groups of individuals who constantly sought to uphold its policies, even when in conflict with those of their own governments.

The struggle was of course unequal and, under the circumstances, it is not surprising that the League, in spite of its learned investigations and wise recommendations, could not enforce upon its members measures less narrowly national than those which were usually taken. Least of all should those permanent officials be blamed who, steadfastly and at the risk of endangering their own position, continued to press unwelcome views on unwilling national statesmen. Such views, when in conformity with the interests of the League, could not in fact be contrary to the true and permanent interests of its members. But they were often, none the less, unwelcome because contrary to the immediate interests of strongly organized national groups and to the national prejudices of the day.

The true position of the League vis-à-vis its members was

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well stated by Mr. Breitscheid, the German Socialist delegate to the Tenth Assembly. On September 23, 1929, on the very eve of the world crisis, as rapporteur of the Second Committee, he declared to the Assembly, while submitting the plan for "concerted action" which was so woefully to fail in the course of the next years:

> We are aware that our proposals simply amount to recommendations with a view to establishing a framework for economic cooperation. They are not as yet tantamount to action. Action will be taken by the states which will enter into specific undertakings quite voluntarily and without any relinquishment of sovereignty. The League is only a platform for the launching of proposals for collective work by all the nations.[1]

Before the Assembly of 1930, the League had not truly begun to deal with the crisis, which had broken out in America in the autumn of 1929. Doubtless its economic activities, stimulated by the World Economic Conference of 1927, were in full swing. The conference for "concerted economic action" had been held, without success, it is true; the conventions for the abolition of export and import prohibitions of 1927 and 1928, although ratified by a large number of states, had not come into force; the conference on the treatment of foreigners had met and failed in November 1929; the Financial Committee had transmitted to the Council a first interim report on the purchasing power of gold, and many other meetings had been held and reports drafted. None of these undertakings, however, had been occasioned, nor even appreciably influenced, by the crisis.

The idea of a European Union, spectacularly launched by Aristide Briand in 1929, was as yet, in accordance with the views of its author, conceived of as a political weapon of peace more than as an economic instrument of prosperity. The Mixed Committee on Economic Crises, which had met under the auspices of the International Labour Organisation in 1927, had not been summoned again in 1930, as Albert Thomas reported in his directorial statement of April 22 of that year.[2]

[1] *Records of the Tenth Ordinary Session of the Assembly: Plenary Meetings*, Geneva, 1929, p. 147.

[2] League of Nations, *International Labour Conference, 14th Session: Report of the Director*, Geneva, 1930, p. 46.

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The only general form of economic distress of which the secretary-general's report of June 1, 1930 contains any detailed mention, was the agricultural crisis. This had given rise to a meeting of agricultural experts with the Economic Committee and to various proposals for technical inquiries into its causes and possible remedies,[1] but no positive action had as yet been urged.

2. *1930*

At the Assembly of 1930, however, the general depression was clearly in the forefront of public attention. The newly elected chairman, Mr. Titulesco, had made it the keynote of his opening address, on September 10, by declaring:

> The Eleventh Assembly of the League will be called upon to discuss questions exceeding in importance any with which the League has yet had to deal. All countries without exception are faced with such grave difficulties at the present time—chiefly difficulties of an economic character—that any failure to solve them may involve a severe set-back to the civilization of the world.[2]

The next day the Rt. Hon. Mr. Arthur Henderson, then British foreign secretary, in his principal speech on the work of the League, had stressed the urgency of economic action in the following terms:

> There is a growing opinion that the economic problem cannot be effectively dealt with except on an international basis. Indeed, the events of recent months have demonstrated more clearly than ever that the world is an economic unit, that national action is impotent in itself to deal effectively with all the causes of world depression. In our opinion, in order to cope with the present world economic situation, the fullest use should be made of the powers and activities of the Economic Section of the League.[3]

This allusion to the crisis by the British foreign secretary was all the more striking as Mr. Henderson was accompanied by his colleague, the president of the Board of Trade, who, on September 13, devoted a long and very interesting speech exclusively to the economic situation. It is unusual for two

[1] *Report on the Work of the League since the Tenth Session of the Assembly*, p. 62.

[2] *Records of the Eleventh Ordinary Session of the Assembly, Plenary Meetings*, Geneva, 1930, p. 31.

[3] *Ibid.*, p. 40.

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members of the same cabinet to speak in the course of the same debate at the Assembly. Mr. William Graham's intervention was therefore all the more significant. He concluded his remarks by the following declaration, which surprised no one as flowing from the lips of the staunchest free-trader of the late British free-trade government:

> I cannot see tariffism and economic nationalism making any real contribution to the solution of the problem. More than ever, in the light of all the burdens which rest upon the world to-day following the war, we have to sound the international note in economic relations, and in order to promote recovery, to beat down those barriers which separate us and which prevent that true cooperation.[1]

The long debate which followed and in the course of which nearly all the foreign ministers of Europe spoke for their respective countries, revealed an alarming divergence of outlook. Almost all the speakers referred to the economic depression, but no two suggested precisely the same remedy. The British representatives remained almost entirely isolated in their advocacy of universal free trade, which is of course the only complete commercial internationalism. They received most support from their Scandinavian, Dutch and Belgian colleagues, who all expressed bitter disappointment with the failure of the attempted concerted action. Mr. Cosio, one of the Uruguayan delegates, was uncommonly frank in his remarks on this failure. At the very beginning of the debate, on September 11, he declared:

> The regrettable fact... has to be recorded that in our own first attempt to translate the proposed solution into concrete form, we were obliged to recognize the great difficulties which, in face of the various national interests, militate against this ideal of fraternity between the peoples—a noble ideal which we all hail enthusiastically, but which still remains in the abstract plane of metaphysics.[2]

Baron Ramel, of Sweden, was hardly less blunt. On September 12, he declared:

> The different countries must act in accordance with principles laid down by the League, recommended by their economic experts and in most cases formally approved by their governments; or at all events they should not act in direct opposition to those principles.[3]

[1] *Ibid.*, p. 71. [2] *Ibid.*, p. 46. [3] *Ibid.*, p. 63.

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The following two extracts from the speeches of the Danish and Belgian foreign ministers I quote here because of their allusions to the rationalization of European economics. On September 12, Mr. Munch, of Denmark, declared that

> the efforts of the League have been paralyzed by the most unfortunate developments which have taken place in the customs policies of many states. Everyone admits that the rationalisation of European production has become a necessity and that such rationalisation is incompatible with the customs policy which prevails in most countries to-day.[1]

On the following day, Mr. Hymans, of Belgium, added:

> Some decision must be reached ... for the crisis is becoming more marked; in some countries it is already acute. We must choose between a policy of economic isolation and nationalism or the adoption of the bold programme of European economic rapprochement.[2]

All the overseas representatives, and notably the delegates from the British Dominions, made the most express reservations on the free trade doctrines of their British colleagues from London. It was natural therefore that liberally-inclined Europeans should adopt and adapt to economic purposes Mr. Briand's idea of a European union. But here also grave divergences were apparent. For the agricultural states of Eastern Europe, the continental union meant above all preferential tariffs for their grain, which was naturally much resented by their overseas competitors. For Mr. Schober, representative of Austria, general European union was the goal, but an as yet inaccessible goal. As a step toward it, he proposed, by what he called the "organic and synthetic method", to establish closer coöperation between neighboring countries which "urgently desire" it, "owing to the similarity of their conditions and the vital necessity of meeting each other's needs".[3] This suggestion, which was eagerly taken up both by Count Apponyi of Hungary and by Mr. Curtius, the German foreign minister, should have warned the world and particularly France of the coming German-Austrian negotiations concerning a customs union. Mr. Curtius, whose political position had just been dangerously

[1] *Ibid.*, p. 51. [2] *Ibid.*, p. 59. [3] *Ibid.*, p. 60.

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threatened by the first great success of the National Socialists at the polls, spoke with peculiar bitterness, on September 16. He said:

> So long as there exists in Europe the present defective economic order —or I should say the present economic disorder—every country will be bound to take such independent measures as it deems necessary to preserve its economic existence.[1]

The outcome of such a debate could not but be disappointing. The resolutions and recommendations which the Assembly, "deeply impressed by the gravity of the economic depression at present prevailing throughout the world", adopted on October 2 on the economic work of the League, clearly reflected the divergence of views which we have just noted.

In the Second Committee, where the draft resolutions on economic matters were discussed by many of the politicians and experts responsible for the policies of their respective countries, antagonism was very much more in evidence than agreement.

One of the most important and hotly controverted issues was that of preferential treatment for cereals to be granted by Western to Eastern Europe. The plea in favor of such preference was based on the principle of European solidarity and not unnaturally opposed on the grounds of universality and of fairness by the non-European members of the League. Mr. Madgearu, Rumanian minister of industry and commerce, speaking in the plenary Assembly on October 1, 1930, on behalf of the eight agricultural countries of Eastern Europe which had just met in a special conference at Warsaw, called attention to the fact that the four principal overseas agricultural states had since the war doubled their exports, obviously implying that they were thus unduly trespassing on European markets. The continental Great Powers of Western Europe, competing politically and economically for influence in the East, were all the more inclined favorably to consider these pleas for agricultural preference as the overseas states

[1] *Ibid.*, p. 101.

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were the main center of resistance to any general lowering of tariffs.

As the nineteen separate resolutions and recommendations on economic matters adopted by the plenary session on October 2, 1930 clearly show, no definite policy of League action to combat the crisis emerged from these debates. Real agreement was possible only when it came to entrusting the League with investigations and inquiries. It may perhaps be said that their very inability to agree on what should be done made the delegates all the readier to give their consent as to what should be studied. Thus the League, that is, the Secretariat, the Economic and Financial Committees, the commission instructed to consider the possibilities of close coöperation between European governments and their various subcommittees and experts, were urged to initiate or to pursue investigations on preferential treatment and the most-favored-nation clause, dumping, indirect protectionism, customs nomenclature, conciliation and arbitration as regards commercial conventions, treatment of foreigners, veterinary matters, unification of laws in respect to checks, international industrial agreements, economic questions relating to agriculture and the purchasing power of gold.

Furthermore, the following resolution was adopted which clearly shows that the Assembly, at a loss to grasp the deeper causes of the crisis, felt obliged to subordinate major action to further inquiry:

> The Assembly, impressed by the seriousness of the present situation, by the general recession of employment and trade, by the constant recurrence of such periods of economic depression and the failure up to the present to discover any concerted means for averting the losses incurred,
>
> Resolves that the Economic and Financial Organisation of the League, which has already been studying the causes of fluctuations in the purchasing power of gold and their effect upon the economic life of the nations, should undertake the study of the course and phases of the present depression and the circumstances which led up to it and, for this purpose, it should collect the information compiled by institutions already in existence in different countries, centralise such information and, where necessary, fill up any gaps that exist.
>
> For this purpose the Economic and Financial Organisation, taking into account in particular the advice of the Economic Consultative Committee, should put itself in touch with national organisations, whether consultative

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or planning councils or research institutions concerned with this matter, and should further, with their aid, consider by what means the work now being conducted on the problem of the recurrence of periods of economic depression may be co-ordinated.

Believing that the restoration of prosperity in the countries which are mainly concerned with agriculture and the production of raw materials is not only a worthy object in itself, but that it will also contribute to the restoration of prosperity in other countries, the Assembly desires that, in the course of the comprehensive enquiry into world economic depression referred to in the present recommendation, special attention should be devoted to the programme and investigations recommended by the agricultural experts who met at Geneva in January 1930, and to the result of the work carried out by international organisations specially qualified in such matters.

It also recommends that, in connection with these investigations, account should be taken of the results of the enquiry conducted by the International Labour Office into unemployment and the work of other competent international bodies on this subject, in order that the Economic and Financial Organisation, having collected all the available information, may examine at the right moment the advisability of international action, due regard being had to the economic, financial and demographic aspects of the labour problem, including the question of raw materials.[1]

The following extract from the closing speech of President Titulesco, delivered on October 4, 1930, contains the diplomatically optimistic confession of the embarrassment we have noted:

In its desire to succeed and its ever-present need to lead the world along the path of progress, it [the Eleventh Assembly] has decided to do its utmost to check, by means of concerted action, the economic crisis that is working havoc in the world. Whether the ideas that have been evolved are destined to triumph, or whether they are merely a prelude to other ideas, is immaterial. The Eleventh Assembly instinctively realized that it could not rest indifferent in the face of the world crisis; otherwise, the serious political problems that lie before us might develop into irremediable social problems.[2]

3. *1931 and After*

Having been set so many and so varied economic tasks by the Assembly of 1930, it is not surprising that the League should have given them, during the coming months, precedence over all its other duties, except perhaps the preparation of

[1] League of Nations, *Resolutions and Recommendations adopted by the Assembly during its Eleventh Ordinary Session*, Geneva, 1930, p. 20.

[2] *Records of the Eleventh Ordinary Session of the Assembly, Plenary Meetings*, Geneva, 1930, p. 228.

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the Disarmament Conference. This was all the more natural as the general depression, far from relenting, grew steadily more severe in the course of the next year, which was to be the year of the Hoover moratorium, of the German collapse and of the British financial and monetary crisis.

The economic work of the League between the Eleventh and Twelfth Assemblies was carried on partly under the auspices of the Permanent Economic and Financial Organisation and partly under those of the so-called Commission of Enquiry for European Union. As both dealt with various aspects of the depression, which was undeniably world-wide, there was not a little overlapping in their efforts.

The European Commission itself discussed and through the medium of subcommittees and special conferences it studied three principal topics: the organization of the cereal trade in favor of the producers of Eastern Europe, agricultural credits and unemployment. Although no truly constructive plans were formulated and carried out by this Commission, it did favor closer coöperation between the agricultural East and the industrial West of Europe and its deliberations led to various bilateral international agreements.

The economic experts, asked by the European Commission to seek means for providing closer economic coöperation among the countries of Europe, presented some very radical conclusions. Recognizing that "the efforts which the League has hitherto made to improve international coöperation have achieved such little result", they deemed it necessary to contemplate entirely new methods. They declared that "the ultimate goal must be the widest possible collaboration of the nations of Europe in the sense of making Europe a single market for the products of any and every country in it".[1]

These opinions, which have certainly not as yet led Europe any further on the road to a complete customs union which their authors expressly contemplated as the ultimate goal, did suffice however to create some misgivings among the overseas states at the Twelfth Assembly.

[1] *Records of the Twelfth Ordinary Session of the Assembly, Plenary Meetings*, Geneva, 1931, p. 199.

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The discussion of agricultural credit measures led to the approval of an international convention for the constitution of an international agricultural mortgage-credit company which had been drafted by the Financial Committee. This convention, already signed by twenty states in September 1931, had however been ratified by only five at the end of the year, so that the company has not yet come into existence.

The study of the unemployment problem gave rise to the establishment, with the coöperation of the International Labour Organisation, of a joint committee of experts and various proposals for facilitating inter-European migration of labor, but to no positive action.

Perhaps the most constructive measure taken by the European Committee to combat the crisis was the following manifesto, drafted jointly by the representatives of Germany, Great Britain, France and Italy, and unanimously adopted at the close of its session, on January 21, 1931:

> As the result of our discussions and conversations during the last few days concerning the problems which our Governments have respectively to face, it has become plain that economic recovery is now being hindered by lack of confidence in the course of future events due to widespread political anxiety. That anxiety has been increased by irresponsible talk in various quarters concerning the possibility of international war.
>
> We recognise that there are political difficulties in Europe at the present time, and that these difficulties have been accentuated by the economic instability and unrest which the world economic depression has caused. The best service we can render towards the improvement of the economic position is the firm assurance of European peace. We therefore declare, as Foreign Ministers or responsible representatives of European states, that we are more than ever determined to use the machinery of the League to prevent any resort to violence.[1]

While the European Committee and its subcommittees were pursuing their debates, the Economic and Financial Committees, sometimes in coöperation with them and sometimes independently, were carrying out the program set up by the Assembly of 1930. The report on the course and phases of the depression which that Assembly had called for was prepared by Professor Ohlin, of the University of Stockholm,

[1] *Commission of Enquiry for European Union, Minutes of the Second Session*, Geneva, 1931, p. 54.

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with the coöperation of the Secretariat and in consultation with various international institutions and experts. The report proved to be a careful and intelligent historical study of the present depression in comparison with previous crises. Its author, however, seems sedulously to have avoided trespassing on the field of political recommendations.

The Twelfth Assembly, which met in September 1931, devoted itself almost exclusively to the discussion of two topics: the impending Disarmament Conference and the world economic situation. When one reads its debates and its reports, one cannot help feeling distressed by the picture of international chaos and international impotence it reveals. Throughout all these documents one looks in vain for any generally agreed upon constructive proposals of League policy. The following extracts from the report presented on behalf of the Second Committee by M. Louis Rollin, French minister of industry and commerce, are quoted here as an exceptionally frank and intelligent analysis of the position of the League vis-à-vis the crisis:

Our position as representatives of our sorely tried countries has, in the present circumstances, a painful and almost tragic character since it seems to leave us helpless face to face with events beyond our control.

... We have heard appeals ... by the most qualified authorities, who have drawn attention to the gravity of present problems and the urgency of solving them, and we should like to be able to respond by deeds to their poignant appeals.

We realise that salvation is only to be found in the union of peoples, which to-day are so closely dependent on one another that they may be compared to limbs of the same body, none of which can be sick or unhealthy without all the others being immediately affected. We should like to foster their economic relations with the ardent hope that this exchange of interests will pave the way to intellectual and moral *rapprochement*. But we find ourselves faced with difficult barriers on which our intentions stumble, if they do not fall.

Failing a complete solution, we have to look for fragmentary and partial ones; but, when we apply them to realities, we feel that they are fragile and inadequate.

International solidarity calls for sacrifices, but the national communities which have to accept them are immediately filled with unrest and anxiety.

The work before us is long, but our sufferings require immediate relief and time presses. We should like to go full speed ahead . . . we should like to open up ampler communications between the peoples, to multiply and strengthen the bonds which unite them, and to create community of interest

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between them; but we are hampered at every turn by the prejudices accumulated by age-long selfishness and misunderstandings.

Our great scheme of economic union requires confidence and confidence has still to be created. Cruel is the conflict between human intentions guided by the spirit of Geneva and the brutal force of realities. We must not fear to emphasise this conflict, for the nations we represent must realise it.

... Without illusion, but without discouragement, we must apply ourselves to bringing national communities to an understanding of the principle laid down in the recommendations of the 1927 Economic Conference... We must call upon the Governments to examine with the greatest attention the resolutions adopted by the technical experts...

Governments must... instruct their public opinion and silence the disturbing elements and the authors of hatred, fear and distrust, in order that the people, instead of looking backwards with regret and revengeful feelings, may resolutely advance in a new spirit and with free hearts towards a true economic solidarity, the source of well-being and pacification.[1]

This statement, drawn from the official report of the Second Committee to the Twelfth Assembly, strikes me as extremely significant. Such documents are, as a rule, prepared with a very large measure of coöperation from the Secretariat, to say the least. The personal tone of these extracts, however, leads me to believe that they were drafted by their official author, a belief in which I am confirmed by the no less unusual fact that M. Rollin, in presenting his report to the Assembly on September 24, 1931,[2] made a speech in which these very same words occur. They are significant, because they faithfully reflect, in the mind of a national statesman and a true internationalist, the conflict existing between the ideals and methods of international coöperation and the national interests and prejudices which prevent these methods from being applied and these ideals from being realized. M. Rollin, as delegate of France, had witnessed the general debates in the Assembly, in which all the speakers had emphasized the gravity of the crisis and more or less outspokenly deplored the failure of the international community effectively to deal with it. He had then witnessed the discussions of the Second Committee, in the course of which the unwillingness or inability of the nations to apply the principles proclaimed by the World Economic

[1] *Records of the Twelfth Ordinary Session of the Assembly, Plenary Meetings*, Geneva, 1931, pp. 197-8 and 119.

[2] *Cf. ibid.*, p. 119.

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Conference of 1927 had been generally admitted, and all the new proposals put forward for economic recovery criticized or opposed.

Of the results of the Conference of 1927, Sir Arthur Salter, who more perhaps than any other had been responsible for its successes, had declared, on September 18:

> Ever since 1927, the resolutions of the World Economic Conference had served as an economic charter for the League. Though they had not been applied or had scarcely been applied, they still remained unchallenged. If a sick man did not take his medicine and failed accordingly to recover, the medicine was not to blame.[1]

Mr. Colijn, the Dutch delegate, who had presided over the successive conferences for concerted economic action with great devotion and increasing despair, followed suit by saying:

> What had become of the various progeny of the World Economic Conference of 1927?
>
> There had been a convention on import and export prohibitions and three conferences had been held on the subject. The child was still alive, but was very delicate and (to judge by the symptoms) might die at any moment. Import restrictions had made their appearance, and import prohibitions might any day follow.
>
> Then there had been a conference on the treatment of foreigners, and this child had been treated as illegitimate children too often were treated by their fathers.
>
> As for the tariff truce, that child had been stifled before birth.
>
> Lastly there was the commercial convention, and that infant was in a foundling hospital, waiting for its parents to appear to claim it, and likely to go on waiting.[2]

After examining with equally severe irony the economic work of the Commission of Enquiry for European Union, Mr. Colijn concluded: "He personally had no new contributions to make to the discussion, except to repeat what he had always maintained—namely that the only road to recovery was along the lines of natural and unforced adaptation of production to consumption", that is, obviously, free trade.

Mr. Stucki, of Switzerland, spoke perhaps more aggressively and more pessimistically than any other delegate when he

[1] *Records of the Twelfth Ordinary Session of the Assembly, Minutes of the Second Committee*, Geneva, 1931, p. 31.

[2] *Ibid.*, p. 32.

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announced that his country, having for the present at least lost all hope of salvation by means of economic internationalism, was about to defend itself by all the restrictions at its command. He told of a recent meeting of a parliamentary committee in Switzerland, in which he had been questioned

about the economic work of the League and of its repercussions on Switzerland. He explained how, in 1927, the World Economic Conference, amid universal applause, proclaimed the necessity of making an end of economic nationalism. He added that, by 1929, it was clear that that aim was unrealisable and that it was then decided to try a tariff truce, but that the proposal was rejected and a much weaker proposal, for a commercial convention, adopted, which did not receive the necessary ratifications.

He was asked by members of the commission in question whether it was a fact that certain countries were imposing import restrictions or prohibitions in defiance of existing treaties and conventions. He had to admit that that was so. He was asked whether, in certain countries, there were official or semi-official organisations which were in principle making no purchases outside the home market. He had to admit that that was so. He was asked whether indirect protectionist measures were being taken in almost every part of Europe. Again he had to admit that that was so.

He was then asked for his opinion as to what policy he considered Switzerland should pursue . . . He believed with all his heart that an ultra-protectionist course was a false course, but what answer was to be given to such representations as these? ... The position of those who, like himself, had for the last five years maintained an optimistic outlook and retained their belief in the economic policy of the League, was hard indeed, but this much was certain, that no one had any right to hide disagreeable truths behind a screen of false optimism . . . Like Mr. Colijn, he had no positive suggestions to put forward beyond the suggestions which 150 experts from all parts of the world had put forward in 1927.[1]

As for the new proposals submitted in the course of the debates of the Second Committee in 1931, they were seven in number.

The Scandinavian states, Holland, Belgium and Luxemburg, suggested that the Assembly should urge the states to stabilize their customs tariffs. This was opposed notably by the overseas countries, by Yugoslavia and by Switzerland, who insisted on the right to raise their tariffs whenever they saw fit.[2]

France had proposed, as palliatives at least, the organization of public works, the development of international in-

[1] *Ibid.*, p. 33.

[2] *Ibid.*, p. 21.

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dustrial agreements and the adoption of a unified customs nomenclature. Public works were opposed for financial reasons and industrial agreements as of doubtful value to producers and as threatening to the interests of consumers. As for the unification of customs nomenclature, it was generally welcomed, but hardly as even a palliative for the depression.[1]

Germany had proposed the creation of an international organization for extending medium and long-term credits at moderate rates to capital-poor countries, and closer European economic coöperation with preferential tariffs. Nobody felt inclined to lend to defaulting countries and European tariff preferences were naturally opposed by all non-European states and criticized also by Great Britain and Sweden.[2]

Italy's representative, Mr. Bottai, minister of corporations, declaring that "national economic reorganization was the prelude to international economic equilibrium", had proposed coöperation between national consultative economic councils.[3] This ill-disguised attempt at Fascist propaganda does not seem to have favorably impressed many delegations.

Was it surprising, under these circumstances, that M. Rollin, when reporting to the Twelfth Assembly on the results of these discussions, should have confessed to a feeling of painful and almost tragic helplessness?

Since the Twelfth Assembly, the economic work of the League has been somewhat pushed into the background by the Disarmament Conference and the Sino-Japanese conflict, which have engrossed the general attention of the public. It has proceeded, nevertheless, both under the auspices of the European Commission and under those of the Economic and Financial Organisation.

The European Commission, on September 26, 1931, set up a special committee to study the extension of customs preferences to agricultural products other than grain, and another to consider a draft pact of economic non-aggression proposed by the Soviet government. The first of these bodies, in October 1931, produced an almost entirely negative report and the second, after a first meeting in November 1931, has

[1] *Ibid.*, p. 25. [2] *Ibid.*, p. 26. [3] *Ibid.*, p. 30.

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adjourned in view of the difficulties of securing unanimous agreement. In general it would seem as if the enthusiasm at first aroused in some quarters by the projected European Union has been laid in the grave with the remains of the great sponsor of the scheme, Aristide Briand. It is very doubtful whether the resolutions recently passed at the Stresa Conference, and rather perfunctorily endorsed by the 1932 Assembly, will suffice to revive it.

As for the various suggestions for action considered by the Economic Committee, their adoption was postponed until the return of more normal economic conditions, in terms which we have quoted above.[1] The Economic Committee has, in fact, devoted all its last reports to setting forth the reasons of its impotence in the presence of the world crisis much more than to proposing remedial measures. The Financial Committee, faced with the unwilling and guiltless default of Austria, Hungary, Bulgaria and Greece, the states whose public finances it had so effectively helped to restore before the depression, has been obliged to adopt exactly the same passively apologetic attitude.

In the International Labour Organisation where, for the last two years, the study of the crisis and of unemployment has overshadowed all other activities, the embarrassment was the same, but the impatient revolt appreciably greater. Under the fiery leadership of the late Albert Thomas and with the ardent support of the labor representatives, the International Labour Conference, in the spring of 1932, resolved to draw the attention of the Council of the League of Nations and of all members of the International Labour Organisation and of the League to the following ambitiously constructive suggestions:

1. That Government delegates authorized to that effect should be given instructions to draw up a list of big international public works for economic equipment and for national works on a large scale, calculated to encourage the general economic development of the countries concerned, to make financial arrangements necessary for that purpose, and to arrange for the works to be undertaken without delay;

2. That the League of Nations and the International Labour Organisation

[1] *Cf. supra*, p. 493.

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should be invited to the conference convened at Lausanne to settle the problem of reparations and other international political debts;

3. That states should take joint action to settle the general problems of currency and credit, and to lay the foundations for a stable international monetary system;

4. That the problems of production and international trade should be examined by Governments in collaboration with delegates appointed by organisations of employers and workers in various countries for the purpose of concluding such international conventions as might ensure a resumption of economic activity.[1]

These bold proposals of the International Labour Conference were adopted by that body on April 30 of the current year, noted by the Council of the League of Nations on May 21 and referred by it to the coming Assembly. As could be confidently predicted, the Assembly, in October last, has in its turn passed on these proposals, with its sterile blessing, to the coming Economic and Financial Conference.

3. *Conclusion*

This closes the sad tale of the League's efforts to combat the crisis. It is a close, but not a conclusion. As Albert Thomas declared at the end of his last directorial report:

Everyone says that the evils from which the world is suffering cannot be remedied, except by international solutions. And yet there is such a state of general panic that a policy of economic armaments is being adopted on all sides, on top of the policy of military armaments. One country after another is trying to manufacture and produce all it can so that it need not be dependent on any one else in case of a conflict. Each is endeavouring to maintain its artificial industries or forms of cultivation by a hedge of protectionist tariffs and import prohibitions which still further increase mutual distrust.[2]

The world economic crisis which, as we have seen, was partly but probably not wholly an international phenomenon, has undoubtedly been prolonged and aggravated by international factors. It has undoubtedly been prolonged and aggravated by the political hostility and distrust between states to which Albert Thomas referred. And it has undoubtedly

[1] *Report on the Work of the League since the Twelfth Session of the Assembly*, Geneva, 1932, p. xix.

[2] League of Nations, *International Labour Conference, 16th Session: Report of the Director*, Geneva, 1932, p. 68.

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also been prolonged and aggravated by the increasing disintegration of the world economic organism into the states which are its constituent and fundamentally inseparable parts. This disintegration is the desperate protest of national sovereignty against an evolution which condemns national sovereignty. And this hostility and distrust are the price mankind has to pay for pursuing and maintaining the policy of national sovereignty which is daily becoming more suicidal.

The League of Nations was more or less consciously conceived by its founders as a transition from the sphere of national sovereignty, which they still respected, to that of world unity toward which it has been timidly and vainly striving. Only when this is generally recognized will mankind recover its equilibrium.

In the present world epidemic the League, as the foremost world physician, has been helpless. This eminent practitioner has been helpless not because he did not know how to combat the epidemic or, at least, how to limit its incidence, but because he himself was stricken more grievously than any of its other victims. Paralyzed on his sickbed, and indeed threatened by the scourge with internal decomposition, he was therefore condemned to withhold his ministrations from his suffering fellow-creatures. Only when the deep and growing reality and the beneficent inevitability of world unity will have come to be generally appreciated, will the League master the crisis. Its first efforts have failed. Time is ripe for its second effort, which, as one of its ablest and most devoted servants has said in the first words of a recent book, as sound as it is brilliant, "tests the quality of a man or of an age".[1]

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[1] Sir Arthur Salter, *Recovery, The Second Effort* (London, 1932), p. 1.

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THE PRINCIPLE OF DISORDER AND INCONGRUITY IN ECONOMIC AFFAIRS

I

IN the physical sciences, the basic conceptions have been those of order, regularity and constancy as they were revealed in the earliest of scientific explorations, astronomy. With the aid of mathematics, itself a series of implications predicated upon postulates of order, the physical sciences made great progress with these conceptions in the fields of physics and chemistry, where confirmation was found on every side.

With such prestige and demonstrated success before them, it is not difficult to understand how the earlier students of social science set as their goal a body of organized knowledge in which the affairs of men would be revealed with the same elegant order, regularity and constancy. The great conceptual system of celestial mechanics, derived no doubt, as Whitehead has suggested, from a prior formulation of the universal as divinely ordered and operated, had impressed itself upon thoughtful men everywhere as the very pattern of existence.[1] Political theory, in the seventeenth and eighteenth centuries, searching for something permanent and secure upon which to rationalize the strivings and conflicts of a changing social order, laid broad conceptual foundations for the political state as a self-regulating system, predicated upon basic postulates as to the nature of the world and of man. In these labors both the hard logic of French rationalism and the equally hard-headed British empiricism were able to contribute to a common purpose, although differently expressed and weighted. Out of these efforts came the body of political theory which we have inherited in our political institutions as well as in our political speculations.

[1] *Cf.* the recent discussion of this point by Vladimir G. Simkhovitch in "Approaches to History II", POLITICAL SCIENCE QUARTERLY (December 1930), vol. XLV, p. 481.

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When, a little later, the time came for the political economists to take up the task of rationalizing the economic activities of men, they too were swayed by the great achievements of celestial mechanics and by the impressive use of its basic concepts in political speculation. They were therefore at pains to formulate a conceptual system within the framework of which economic events could find their predestined place. Economic thought was from the outset, then, a search for the underlying system of economic forces operating, like gravitation, to determine precisely what should and could take place. Economic wisdom, on the part of the statesman as well as of the entrepreneur, lay in discovering these economic laws and submitting to their guidance, since nothing permanent could be achieved except in accordance with these laws.

No doubt the attraction of this conceptual system of economic affairs was enhanced by the great confusion occasioned first by the agricultural revolution and then by the coming of the industrial revolution. Old traditions and guides to action were rapidly obscured. Novel situations presented unique opportunities. As soon as they could shake off some of the conflicting ideas of medieval economic thought against which Adam Smith labored so manfully, the business men of the late eighteenth and early nineteenth centuries, and the political leaders who had already become familiar with that type of reasoning in affairs of state, embraced the theories of political economy as a revelation of the universal purpose. It is to be noted that Adam Smith could so confidently urge the liberation of individual enterprise and the policy of *laissez faire*, because he was convinced that economic affairs were governed by the forces of an underlying economic order or system, the "unseen hand" guiding men to social good in all their selfish efforts.

It is not our purpose to rehearse the tale of economic speculation during the nineteenth century. Sufficient to point out that, along with political theory, economic theory has clung to the basic conception of an underlying system or order to reveal which was its primary task. The *modus operandi* of the system has changed from generation to generation as suc-

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cessive theorists have offered new formulations of that system and its processes. With but little dissent, and that cavalierly ignored or logically refuted, the body of economic thought has kept persistently at this main task of revealing the regularity and order in human affairs, more particularly in economic activities. Even the radical assaults upon nineteenth-century economics and upon the *laissez faire* policies of government were patterned by preconceptions of an underlying order and system, as in Karl Marx, who employed the Hegelian logic to reveal the operation of a fundamental economic structure and to prove the inevitability of his forecasts. Within recent years this conception of an underlying system has found a new exemplification in the concept of business cycles, and investigators are industriously searching for the laws governing the rise and fall of industrial activity and prices, confident that such laws must be found because these cycles are the outward and visible signs of an inward and pervasive economic system.

After political and economic speculation had been well launched upon these paths, the break-up of the old agricultural, handicraft society, with attendant confusion and distress, directed attention to the problem of social organization and change. As was natural, the social theorist, true to the prevailing "climate of opinion", and in deference to those who had preceded him, essayed the task of framing a conceptual system of social life which would serve as a guide in urgent social reform. Thus the body of sociological thought was founded upon the tried and true principles of celestial mechanics as they had been adapted and refined to fill the needs of social speculation. Down to the very recent past, sociologists, like economists and political theorists, have been searching for the underlying social system, the forces of which must be discovered and understood as the very condition of intelligent social direction.

Seen in the broad perspective of historical development, the social sciences have been a search for the fundamental economic, political and social systems which, underlying all social life, are more or less obscured by the naïve and con-

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flicting activities of men. This search has been sustained by a faith in the ability of scientific method to disclose these systems of social forces as celestial mechanics so magnificently revealed the operation of our solar system. This faith has been buttressed by the assumption that social life, being a part of the natural world, must be orderly, regular and constant, just as scientific investigation has shown the rest of nature to be ordered and lawful.

II

We must recall that investigators in the fields of physical science may invoke certain governing principles of organization, coherence, interaction, continuity and constancy with respect to phenomena under study. Thus they may, with a high degree of probability, proceed to infer the whole from the part and to impute to the part a determinate rôle in the whole. This is exemplified in anatomy for example, and in physiology, to refer to the biological sciences in which these principles might be thought less coercive than in physics or chemistry. In chemistry and physics there have been progressive revelations of order and system, of regularity of behavior and constancy of relationships in every aspect of nature brought under study, so that, as in celestial mechanics, the physical sciences are studying an organized systematic whole.[1] Because these principles are found in operation, it is possible to predict the future from the past in many fields and to infer the past from the present.

When we turn to human affairs and social life, we cannot invoke these principles because we are dealing with human behavior, which is learned or acquired by the individual through experience. The physical scientist is dealing with structures and events which are part of the very stuff of nature, the patterns of which were evolved and laid down aeons ago.

But man, and especially man's behavior, is not an event

[1] The recent skepticism over the application of these principles to the ultra-small world of electrons and radiation quanta is not immediately relevant here, but should be noted as an indication of a limitation upon these principles.

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dictated by patterns laid down aeons ago. Of all organisms man has remained the most plastic and escaped with the least structural limitation upon his behavior. As several observers have pointed out, every other species has advanced by differentiation of structure, but man has uniquely found the way to adjustment by modification of his habits and by the use of tools, rather than by alteration of his anatomy. In consequence, the history of man is a record of continual change and readjustment, of experiments and mistakes. He has developed what we call culture, patterns of conduct which govern his activities (especially his relations with other persons) and the exploitation of his tools and techniques. This culture has developed in an extraordinary manner, with vestiges and survivals of most ancient times continuing along with the most recent innovations and experiments. Some persons are living on one level, others on another; and the greatest possible discrepancies exist in the prevailing adjustments to the social life and also in the personal lives of the individuals. As we are discovering from the intensive study of personality, what the individual learns from the cultural life is never symmetrical and coherent and rarely is it integrated. Man can, at one and the same moment, behave in the most incongruous and discrepant patterns, for within the framework of his elastic personality are conflicts and maladjustments that would utterly ruin and confound any other organism or energy complex.

With a culture or social life lacking coherency and uniformity, with individuals exhibiting all manner of asymmetrical development and warped adjustment, we have a complex that almost defies description or classification.

A glance over the past one hundred and fifty years will serve to show how utterly different is the situation in social life from that faced by physicists and chemists. With the introduction of machine industry came the rapid passing of the agricultural, handicraft society and its feudal codes. The process was assisted by legislation which repealed or modified many of the old patterns, so that man could freely experiment in discovering new modes more consonant with the use of the

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factory, and with wage-earning and competitive profit seeking. Economic and social theory provided the rationalizations for the change, giving man the necessary reassurance while he was relinquishing the old and accepting the new. Then followed all manner of experiments in the organization of industry, in the elaboration of pecuniary and credit machinery to facilitate the newly created industry and consequently enlarged commerce, and in various other efforts to adapt social life to the new material culture. Sometimes a bold experiment or variation in the accepted mode was abruptly stopped by legislation. Again court decisions striving to bring the new industry and business into line with older precedents forced modifications, limitations, evasions upon manufacturers, laborers, financiers and others. Legislation would then be invoked to alter the legal decisions where possible or to curtail the activities sanctioned by the courts. Competition was fostered but too rigorous competition was forbidden; monopoly or restraint of competition was officially banned but not interfered with except when deemed excessive. Banking was authorized on one basis and suddenly outlawed in favor of another basis. Credit instruments were devised only to be refused recognition or sanction by the courts, and then were modified, revised or patched up to pass judicial muster.

Production of goods was initiated everywhere by anyone who could manage to start a factory or workshop. Productive processes, formerly unified in the handicraft and putting-out system, were split up into various artificial divisions and stages, depending upon the amount of capital and available machinery collected into one factory; and all manner of business practices were devised to overcome these breaks and separations and keep goods moving along in the essentially unified productive process.[1]

Distribution of goods was undertaken by various people with different ambitions, traditions and irrelevant prejudices, leading to organizations and practices of varying character to which industry and finance of necessity adapted themselves.

[1] *Cf.* the writer's paper on "The Significance of Industrial Integration", *Journal of Political Economy*, vol. XXVIII, no. 1, April, 1925.

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The tale is endless but monotonously the same. Everywhere there was confusion, bold experiment coupled with reluctant conservatism, improvisation and ingenious compromises. The material culture of machine technology was exploited through credit mechanisms and pecuniary devices that formed a crazy quilt of social survivals, judicial limitations, legislative mandates and interferences, business folkways and conventions.

It is a tribute to the courage of the earlier economists that they attempted to find some order and system in this complicated situation; and their ingenuity in devising theories which, abstractly at least, gave these discrepant efforts the appearance of a coherent whole, will ever be worthy of praise. It is difficult, however, in the face of the actual history of our present social life, to see how anyone can see evidence for believing that this amazing situation is an economic system, or for a faith in the operation of economic laws. Rather one is impressed by the very absence of any system, order, regularity or constancy in the economic development of the nineteenth and early twentieth centuries.

What seems to have taken place is something like this: Under the influence of the rational tradition of the seventeenth and eighteenth centuries, economists constructed a conceptual system, expressive of a philosophy of social life which they, along with most others, believed to be most desirable and effective, especially by way of escape from the older economic order which they saw passing. Under the guidance of that conceptual system we have been attempting to shape the conduct of our industry and business, our pecuniary and credit operations and our legislation and courts, ignoring the defects and difficulties and inconsistencies (to say nothing of the injustices).

So long as there was a need for such an economic philosophy it served an important social purpose. Indeed no culture can exist without a conceptual system expressing the dominant ideals and patterns by which the group life is to be regulated and the conflict and discrepancies reconciled. But within the past decade or so the social economic situation has

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completely changed and a new way of life has begun to emerge, for which the existing economic conceptions are becoming increasingly inadequate. In consequence we are becoming aware of the need for new formulations.

Indeed the situation today is very similar to that upon which Adam Smith reflected. Then the newly invented machinery was finding serious obstacles to full utilization in the historically developed scheme of legislative and guild regulations upon production and sale and employment. It was the office of Adam Smith to formulate a polemic against that inherited institutional conduct and to preach the gospel of *laissez faire* under which the exploitation of machine industry could go rapidly forward. The theory of a system of economic forces, modeled upon the prevailing pattern of celestial mechanics, supplied the necessary framework of ideas to meet the need of a new social philosophy adapted to the early days of the industrial revolution.

In the present industrial and agricultural situation, the effective use of modern machinery and technology is being impeded by the inherited institutional complex of free competition, bank credits and fluctuating prices, with the concomitant social distress of unemployment and unnecessary poverty. We are endeavoring by all manner of expedients to avoid some of these difficulties and to remedy some of the defects, but it is evident that the onward march of technology will necessitate large-scale modifications in our institutional arrangements.[1] Before we can accomplish such a social change as is involved in giving up free competition, credit control and fluctuating prices, we must have a new set of conceptions and formulations to explain the surrender of the old and justify the acceptance of the new. What we await is another Adam Smith to rationalize the present stage of the industrial revolution as he did the earlier stages. In this service, social theory operates like mathematics: "if thus and so is the case, then. . . ." In social theory we must make

[1] *Cf.* the writer's analysis of this situation in a paper on "Social Problems" in *American Journal of Sociology*, vol. XXX, no. 4, January 1925.

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certain assumptions about the kind of social life we desire or think possible, and then develop the implications for action, just as nineteenth-century economists did for the assumption that a competitive social life was most desirable or as Russian economists are doing today for communism.

Before any such constructive formulations can be made, however, it will be necessary to emancipate ourselves from many older ideas and conceptions.[1] This is where the recognition of the principle of incongruity and disorder in social life becomes important. At once it changes the focus of our thinking, directing us away from the search for the underlying economic laws and forces of a mythical economic system, by which to guide and discipline our activities and conduct. Instead, we face a social life and a congeries of economic activities which are chaotic and disorderly, for which we must imaginatively create new patterns of behavior whereby some order, regularity and constancy may be introduced. Just as Adam Smith and his followers, with the aid of the law and the courts, helped to create the *laissez faire* money economy out of the preëxisting regulated handicraft-barter economy, by reasoning from their basic assumption of *laissez faire* and free competition to the actual conduct of business, industry, finance, credits, etc., so the economists of tomorrow must create the new patterns for an industrial society in which poverty, hardship and want will be eliminated through more effective exploitation of the available and growing machine industry and technology.

The principle of incongruity and disorder in human affairs is not a mere anarchic gesture nor an impertinent dismissal of present economic and social theory. Rather it is an acknowledgment of the tremendous rôle of theory in social life, where, like religious beliefs, it expresses the dominant conceptions and aspirations of the group and molds their conduct of life. Only in so far as we recognize that our social life must be patterned and directed by intelligence and imagination (because it is like all cultures, haphazard, disorderly

[1] See the writer's paper, "The Emancipation of Economics", *American Economic Review*, vol. XIV, pp. 17-38, March 1924.

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and more or less chaotic) can we realize the immense task awaiting economic and social theorists. So long as they accept the conceptions of an underlying economic system, of economic forces and laws inherent in the very nature of the world, they cannot become cognizant of this creative task confronting them.

If and when they do accept the necessity of creating the patterns of social order, they will find awaiting their use a number of new ideas and conceptions which will give their theories a very different cast from that of their predecessors. The changing conceptions of human nature, now being forged by students of behavior and personality, will perhaps foster the most far-reaching changes in social theory. Instead of the former belief in a fixed, rational, volitional, autonomous individual always seeking his own gain, we are learning that man is essentially irrational and plastic, not at all the creature pictured in the hedonistic calculus and traditional ethics. This is of immense significance for the future social science which will be concerned with man's behavior and its patterning into the social life we are to achieve.[1] It has consequences for social science as far-reaching as the recent discovery in physics and chemistry of the basic similarity of all matter and energy and its differentiation through the organization or patterning it receives in various configurations and transformations.

Equally important is the changing conception of man's life. Since he has faced a precarious and ambiguous world from the beginning of his history, threatened always with hunger if not starvation, all his thinking and conduct has been of necessity acquisitive. Today he is in sight of a social life in which, for the first time, plenty will replace scarcity. There will be neither necessity for nor utility in the fiercely competitive patterns he has so long followed. His preoccupation with making a living (or earning a living) will flag with the collapse of the older institutional arrangements. Economic activity bids fair to lose its long dominant position in human

[1] *Cf.* "Economics and Human Behavior", by Wesley C. Mitchell, *Quarterly Journal of Economics*, vol. XXIX, no. 3, 1914.

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life, as engineering replaces the uncertainties and hazard of competitive enterprise in industry and business. These changes will call for a radically altered viewpoint in the social sciences, for the latter, like mankind, are suffering from a hunger hysteria that even in the face of plenty acts like a neurosis to prevent intelligent adaptive behavior.

Economics somehow must escape from its traditional preconceptions and assumptions and adjust itself to a world in which a wholly new set of conditions obtains, for which only creative thinking will be useful. Perhaps, as has happened in similar situations before, a new group, unfettered by the traditions and conventions of the past, will arise to do this creative thinking. Thus far economists have not shown much fertility of thought in dealing with the present social situation, although their predecessors, as we have indicated, played a major rôle in the early days of the industrial revolution.

The great task of achieving an industrial society awaits the labors of some group which can replace the largely sterile ideals of our inherited social science, with those of a more dynamic, instrumental and creative character. Such a group will start from the principle that social life, as a cultural artifact, is essentially and historically disorderly and incongruous, and that order, system and regularity are not given, but must be achieved.

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THE EARLY DEVELOPMENT OF THE LAW OF CONTRABAND OF WAR I

"THE word contraband", says John Bassett Moore,[1] ". . . signifies something prohibited, — a trade carried on, or an article imported or dealt in, in violation of some inhibition. . . . The term contraband of war denotes commodities which it is unlawful to carry to the country, or to the military or naval forces, of a belligerent."

In earlier centuries, contraband lists were restricted to a relatively small number of articles. The fact that modern science has made useful in war many substances formerly considered unimportant for a belligerent's purposes has led to great extensions of lists of contraband, until in the World War almost nothing escaped the prohibition. This state of affairs raises anew the question as to the original basis of the law of contraband of war. Various theories have been advanced:— that the rule of law developed from a principle that a belligerent had a right to prevent neutrals from furnishing to the opposing belligerent anything which would be useful in the war; that it was merely an arbitrary rule, owing little to logic but designed to establish a compromise between irreconcilable interests of belligerents and neutrals; that it was only the natural historical evolution of the papal bans on trade with the infidel; that it has no legal basis but is only a manifestation of one of the many forms of economic warfare which inevitably accompany any great struggle between nations.

Some of the historical and other factors which played a large part in the development of the international law of belligerent and neutral rights prior to the nineteenth century, have been indicated elsewhere.[2] A *caveat* may again be

[1] *International Law and Some Current Illusions* (1924), p. 40.

[2] Jessup and Deák, "The Early Development of the Law of Neutral Rights", POLITICAL SCIENCE QUARTERLY, vol. XLVI, pp. 481 *et seq.* Attention may be drawn here to the suggestion there made that a belligerent had a double interest in intercepting his enemy's trade: (1) to deprive his enemy of the goods; (2) to enrich himself by the confiscation of ships and cargoes.

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entered here against reading back into documents and events of the sixteenth, seventeenth and eighteenth centuries notions which are today taken for granted. The opinions of jurists like Sir Julius Caesar and Sir Leoline Jenkins in prize cases in the sixteenth and seventeenth centuries, the frequent appeal by statesmen of that period to "the law of nature and of nations", the citation of Grotius' great work in a brief before a French prize court as early as 1653,[3] are all instances which tend to encourage an exaggeration of the state of the international legal system three hundred years ago. It is surprising enough that even prior to the Peace of Westphalia, terminating the Thirty Years' War, international law had acquired sufficient strength to be a real factor in the practice of diplomacy; it would be astounding if it had not been at that period subjected to even greater vicissitudes than it is in this twentieth century.

Twentieth-century ideas of the law of contraband of war imply three things: on the part of a belligerent, the right to seize and to confiscate certain goods going to his enemy; on the part of a neutral government, no obligation to prevent the shipment of such goods; on the part of a neutral individual, risk of loss if his shipment is intercepted by the belligerent. International practice only gradually reached these positions.

Instances of belligerent attempts to prevent, by proclamation, all trade with an enemy, are to be found as early as the thirteenth century.[4] Such incidents recur again and again but more and more on the basis of some special justification. By the sixteenth or seventeenth century they were met by neutral governments' insistence upon their right of freedom of trade.[5] Less sweeping interdictions resulted, until at length

[3] Bib. Nat., Mss. F. 18592, pp. 567, 568.

[4] Pyke, *The Law of Contraband of War* (1915), p. 30, and authorities there cited. Pyke finds a religious precedent for these proclamations in the early papal bulls forbidding trade with the infidels. See Söderquist, *Le Blocus maritime* (1908), pp. 9 *et seq.*

[5] Numerous examples of this claim may be cited. In the 1650's when Sweden was actively at war with many states or princes, much stress was laid upon the argument that an attempt was being made to monopolize the trade of the Baltic. See statement of the Polish Resident to the States General on

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the total prohibition on trade was narrowed down to a prohibition on trade in contraband articles, enemy goods and trade with blockaded ports. But the relic of the past is found *inter alia* in the paper blockades of the Napoleonic Wars.[6]

One may be justified in asking at this point why, if neutral trade were not in general considered free, it was necessary to invoke as a defense legal rules regarding reprisals, enemy character and, later, contraband and blockade, to justify the seizure of neutral commerce in time of war? The Board of Admiralty of Amsterdam undoubtedly were expressing a generally accepted principle when they remarked to the States General in 1653 that

> trade with England in such goods as are not contraband [or enemy's goods] is not forbidden to neutral nations, even in your H. M's proclamation . . . nor is it stated that ammunition and ships' stores are not to be conveyed from one neutral place to another, but only a warning issued against carrying the same to England . . . [7]

September 4, 1655 (N. S.), 3 Thurloe, *State Papers* [hereinafter cited: Thurloe], p. 733.

The treaty of Louis XIII with Queen Christine of Sweden in 1633 provided for an alliance "que la seureté de la Mer Baltique et de l'Ocean sera conservés." VI Dumont, *Corps diplomatique* [hereinafter cited: Dumont], p. 48, Art. I. Article XIII of the Treaty of Neutrality of Maience between Sweden and the German Catholic States (1632) provided for free commerce and communication for the subjects of contracting parties. (VI Dumont I, p. 29. See *infra*, p. 536.) The idea of a monopoly of colonial trade which developed very early seems clearly to have been thought of as an exception to a general right of free trade. See Report to Secretary Thurloe from the Barbadoes, March 16, 1654, 3 Thurloe, p. 249; Ambassador Bordeaux to de Thou, June 15, 1655 (N. S.), *ibid.*, p. 513; and especially the letter of September 1655 (N. S.) from the Dutch ambassador, Nieuport, to the Greffier Ruysch, in which Nieuport discusses the English laws and orders, and reports Sir Charles Wolsely as claiming that the Anglo-Dutch treaty reëestablished only the commerce in Europe. (*Ibid.*, p. 749.) Such a monopoly on the part of Spain was protested by Elizabeth in 1580 with strong assertions of the freedom of the seas based on the law of nations (Cheney in 20 *English Historical Review*, 1905, pp. 659, 660.)

[6] Such total bans on commerce will be considered in this study only incidentally as they bear upon the law of contraband; they are the subject of a separate study now in course of preparation by the authors.

[7] Navy Records Society, *The First Dutch War 1652-54*, edited by Gardiner and Atkinson (1906) [hereinafter cited: *The First Dutch War*], vol. III. pp. 387, 389.

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Treaty Development

The ideas behind the development of the law of contraband seem to be found in treaties relating as much to war on land as to war on the sea. Back of these treaties are important national economic interests — the Dutch concern for their carrying trade; Spanish dependence on foreign supplies of naval stores; Swedish concern for markets for their forest and mine products, and the like. This point will be considered in greater detail in the continuation of this article in a subsequent issue of the QUARTERLY. These treaties, concluded mainly in the sixteenth and the early seventeenth centuries, contain promises to aid the other contracting party, when it is a belligerent, with men or with money; but there are also promises to refrain from aiding the enemy of the other contracting party. The lists which these treaties often include, of things which must be furnished to an "ally" or must not be furnished to an enemy, seem to be the prototypes for the later lists of contraband. It is perhaps unnecessary to note that under modern doctrines, a state could not fulfill a promise to aid one belligerent with men or money and still remain neutral.[8] In the sixteenth century, neutrality did not imply such strict impartiality. The situation can be appreciated only by examining the treaties in the chronological order of their conclusion. This examination will be followed by a study of the state practices and prize-court decisions which were contemporaneous therewith. The synthesis of this data as of the close of the seventeenth century should give a picture of the foundations on which the modern law of contraband has been built.

The treaties containing promises to refrain from aiding the enemies of the other contracting party are those which lead most directly to the subsequent treaties which deal with the subject of contraband in its modern aspects. As will appear,

[8] It is argued that members of the League of Nations, in fulfilling their obligations under the Covenant, may do so. Westlake cites examples of similar arguments in the eighteenth and nineteenth centuries—*International Law* (2d ed., 1913), Part II, p. 206. *Cf. The First Dutch War* (1900), vol. II, pp. 315-316. Vattel asserted that a state might give the aid pledged by a prior treaty and still maintain neutrality—*Le Droit des Gens*, Bk. III, secs. 104-105.

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these early treaties contain three types of provisions: one type involves a promise that the state will not itself aid the enemy; another involves a promise that it will prevent its citizens or subjects from furnishing aid; and a third type approaches the modern formula which merely notes that a citizen or subject who aids the enemy must take the consequences and will not be protected by his own government from the penalties which the aggrieved belligerent may inflict. When a state promised that it or its citizens would not aid the enemy of its ally with men, money, arms or munitions, those things were frequently referred to in the early documents as "prohibited goods" (*marchandises prohibées*), but the same term was also applied to goods which for other reasons a state by its national law forbade its subjects to import or export and the term was therefore not at first synonymous with "contraband."

A state was frequently a party to treaties of all these various types at the same time; political exigencies or self-interest demanded one type with one state and a different type with another.

Because of the frequency with which provision was made for the rendering of aid to an "ally" without actual participation in the war, it is not always possible to determine from the text of the treaty whether "neutral" assistance or co-belligerency is contemplated.[9] For example, the Treaty of Peace and Amity of 1502 between Henry VII of England and James IV of Scotland contains an agreement by each king to aid the other if he is invaded, any prior treaty, league or confederation to the contrary notwithstanding. The princes also agreed that they would not give aid, counsel or favor, openly or secretly, to the enemy of the other.[10] A simple provision to aid the other party against his enemies is found in the Treaty of Confederation and Alliance of 1504 between Louis XII of

[9] In 1744, Frederick the Great argued that "as an ally of the Emperor Charles VII, he was entitled to invade Austrian territory" but that Maria Theresa had no right to invade his dominions, on the theory that "Il faut bien distinguer entre les parties belligérantes et les auxiliaires." See Satow, *The Silesian Loan and Frederick the Great* (1915), pp. 9-10.

[10] IV Dumont I, p. 23.

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France and Emperor Maximilian I.[11] In the same year Louis made a three years' truce with Ferdinand and Isabella of Spain in which both parties agreed not to render aid to the enemies of the other.[12] In 1505 there is an example of a treaty in which the princes agree not only that they themselves will not aid the enemy of the other with advice, favors, ships, armed men, money or provisions ("victuals"), but also that they will prevent their subjects from doing so.[13] It is this type of treaty which reveals the closest connection with the later treaties dealing specifically with contraband.

A common type of treaty provides for mutual aid against the respective enemies of the contracting parties even if such enemies are allies or confederates of one of the parties.[14]

The Anglo-French treaty of 1510 is unusual in promising freedom of trade to Italian merchants, provided merely that they will not "do nor attempt anything hostile" to the two kingdoms or their subjects and allies.[15] There is also the usual undertaking that no hostilities will be committed against the allies or confederates of the contracting parties and that neither party will harbor anyone who injures the other.

The treaty of 1508 between Maximilian I, Charles of Spain and Henry VII of England contains the usual promise not to aid the enemy and an agreement to aid the other contracting parties with armed men, at the expense, however, of the party assisted.[16]

The Anglo-French treaty of 1515, in Article III, contains a stipulation against selling or furnishing provisions, weapons or supplies to foreign ships equipped for war which may come

[11] *Ibid.*, p. 58.

[12] *Ibid.*, pp. 51, 52.

[13] Treaty between Henry VII of England and George, Duke of Saxony, *ibid.*, p. 74.

[14] Treaty of Peace and Amity of 1505 between Henry VII of England and Philip of Castile, *ibid.*, p. 76; Treaty of 1509 between Louis XII and the Grisons, *ibid.*, p. 124; Treaty of 1510 between Ferdinand, King of Aragon and Sicily, Joana, Queen of Castile, and Henry VIII of England, *ibid.*, p. 128.

[15] *Ibid.*, p. 125.

[16] *Ibid.*, p. 102. *Cf.* Anglo-French Treaty of 1572, *infra*, p. 532.

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into their ports, presumably (though not expressly) if such vessels be bound against the other contracting party.[17]

The Treaty of 1542 between Henry VIII of England and Charles V of Spain contains a provision in Article X which declares that each sovereign will punish any of his subjects who do anything to the injury of the other party in violation of the treaty, but that the individual's transgression shall not interrupt the peace and amity between the two states.[18] Amplifications of this idea become common later and forecast the idea that it is only the private trader who suffers if contraband is carried. The Anglo-French treaties of 1559 and 1564 have a like statement following the agreement of each party not to aid the enemy of the other.[19] The treaty between the same two states in 1572 contains a different idea. Article XV of this treaty provides that if one party is invaded the other "shall sell at a reasonable Price, if he can conveniently, or shall permit to be sold and transported out of his Kingdom, Musquets, Morions, Habergeons, Gun-Powder, Ball, Sulphur, Saltpeter, and other such like things which are of use to repel the Enemy."[20] This list resembles the later contraband lists but the idea is quite the reverse. It will be noted that the sale might be either by the state or by private merchants.

The treaty of 1604 between England and Spain has two interesting articles. Article IV reads as follows:

> That neither of the Parties shall afford nor consent to their Vassals, Subjects or Inhabitants affording Assistance, Favour or Counsel, directly or indirectly, either by Land, Sea or Fresh Water; nor furnish or consent to his said Vassals, Inhabitants or Subjects furnishing Soldiers, Provision, Mony, Arms, Ammunition, or any other kind of Assistance, to foment War with the Enemies and Rebels of the other Party, of whatsoever sort they be, either invading the Kingdoms, Countries and Dominions of the other, or withdrawing themselves from the Obedience and Dominion of the other.

[17] *Ibid.*, p. 204.

[18] IV Dumont II, pp. 217, 219.

[19] V Dumont I, pp. 31, 126; Arts. III and IV of both treaties.

[20] *A General Collection of Treatys, Declarations of War, Manifestos, and other Publick Papers, relating to Peace and War* (2d ed., London, 1732) [hereinafter cited as *Anon. Coll.*], vol. 2, pp. 65, 71. French text in V Dumont I, pp. 211, 213.

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Article XX provides that as the parties themselves have agreed not to give any warlike assistance to the enemies of the other,

so it is likewise provided, that their Subjects or Inhabitants of whatever Nation or Quality they be, shall not, either on pretence of Trade or Commerce, or under any other Colour, assist the Enemies of the said Princes, or of any one of them, in any manner, nor furnish them with Mony, Provisions, Arms, Engines, Guns, or Instruments fit for War, nor afford any other warlike Furniture; so that whosoever shall contravene, shall be liable to the severest Punishments, as Covenant-Breakers and seditious Persons.[21]

The Anglo-French treaty of 1610, in Article XVIII, repeats, with unimportant variations, the provision of the treaty of 1572 regarding the sale of munitions to the other contracting party in case he is attacked.[22] Thus to Spain, England made the negative promise not to supply or permit to be supplied munitions to Spain's enemies, while to France England affirmatively promised to supply the sinews of war. These treaties are none the less interesting since in both types the lists of articles which they contain foreshadow the later contraband lists which naturally succeeded them with the growth of the notion of the proper rôle and status of a neutral.

The Treaty of Alliance for Protection of Navigation and Commerce which the Netherlands concluded with Lübeck in the following year (1613) is of the Anglo-Spanish type just discussed. The list of articles which must not (under pain of severe penalties) be furnished by nationals of one state to an enemy of the other state is as follows: money, troops, vessels, munitions, arms, provisions "and other similar things."[23]

The Dutch Treaty of Alliance with Sweden in 1614 is clearly of a transition type. By Article V, both parties agree that their citizens or subjects shall not furnish to the enemy

[21] 2 *Anon. Coll.*, pp. 131, 135, 142. Latin text in V Dumont II, pp. 32, 33, 35. An English writer finds this the first treaty making an "attempt at precision in defining contraband." Atherley-Jones, *Commerce in War* (1907), p. 8. It seems obvious, however, that this treaty merely follows the line of development and is not very different from the treaty of 1505 noted above (*cf.* p. 531).

[22] 2 *Anon. Coll.*, pp. 161, 168. French text in V Dumont II, pp. 149, 150.

[23] V Dumont II, p. 231.

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of the other "counsel, men, money, munitions of war, victuals or like aids." Article VI, however, reads as follows:

Bien entendu toutefois, que par là ne sera point deffendu le Trafic & Commerce libre hors desdites Provinces Unies, soit pour la Ville de Riga comme pour quelque autre Ville, Pais, & Havres scituez sur la Mer du Nord ou de l'Est qui sont sous l'obeissance des ennemis presens ou future de sa Majesté ou de la Couronne de Suede; Lequel libre Trafic & Commerce sa Majesté Royale permet auxdits Habitans des Provinces Unies dés maintenant & pour toûjours, sans qu'il leur puisse être fait aucun trouble ou empêchement à l'avenir; à moins que saditte Majesté n'eût assiegé la Ville de Riga ou autres Villes scituées sur les Mers du Nord & de l'Est pour les conquerir.[24]

Here neutral Dutch trade is groping for freedom, based on the permission of the Swedish crown and confined to a limited (although perhaps under the circumstances, sufficient) geographic area. It is notable that this trade is limited by the possibility of a Swedish blockade, and by the agreement not to trade in the articles mentioned in Article V. We have here a conception which is the forerunner of the modern idea of contraband, but it is embodied in a treaty which implies a duty to prevent the shipment of the prohibited articles, whereas under the later customary law, no such duty exists.

In the next year (1615) the States General concluded a treaty with the Hanseatic cities for a Union for the Preservation of Commercial Privileges. This treaty is again in the form of a real alliance, with each party agreeing not to permit to be sent from its territories to the enemy of the other contracting party "money, troops, vessels, munitions, arms, provisions or similar things",[25] and promising, moreover, as far as possible to prevent others from furnishing such supplies to that enemy.

The peace treaty of 1618 between Sweden and Muscovy is of the same type in a limited way, each agreeing not to aid the Poles with arms, money or soldiers, if they should be at war with the other.[26]

[24] V Dumont II, pp. 245, 247.

[25] Article VII; V Dumont II, pp. 274, 276. See the identical provisions in Art. VII of the Dutch treaty with Lübeck in 1613; *supra*, note 23.

[26] Article XVIII; V Dumont II, pp. 308, 309.

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The Danish-Dutch treaty of 1621 is likewise properly one of "Alliance", with each promising to aid the other in war and not to aid the other's enemy with "men, vessels, money, provisions, munitions, or in any other manner." [27] This treaty was concluded three years after the outbreak of the Thirty Years' War and in the last year of the twelve years' truce in the Netherlands. This and the three preceding treaties were concluded during the period when Sweden, under Gustavus Adolphus, was at war with Poland and consequently at a time when trade in the Baltic was especially endangered.[28]

The English treaty of 1623 with Russia [29] is of the old type but specifies in Article VII that subjects who aid the enemy shall take the peril on their own heads.

The Anglo-Dutch treaty of alliance against Spain, in 1625, presents the contraband concept in full development. Four articles may be quoted in full:

XX. All Contraband Goods, such as Ammunition and Provisions, Ships, Arms, Sails, Cordages, Gold, Silver, Copper, Iron, Lead, and the like, design'd to be carry'd by any one from any Port into *Spain*, or into any other Dominions under the Obedience of the said King of *Spain*, or his Adherents, shall be good Prize, together with the Men and Ships that carry them.

[27] Article IV, V Dumont II, pp. 399, 401.

[28] Treaties with the Barbary states involved special considerations and practices and cannot safely be treated *pari passu* with treaties between two European states. There are interesting provisions, however, in the Dutch treaty of peace with Algiers in 1622. (V Dumont II, p. 413.) Article V provides that if Algerian corsairs capture Dutch ships carrying "Goederen van contrabande", those goods will be "goeden Pryse". Article VI provides that Dutch ships may be visited to see if they carry "Goederen van Contrabanda". Article XXI, however, reads, in the French translation: "Que toute les Marchandises deffendues [alle verboden Waren], comme Poudre, Plomb, Fer, Fer Blanc, & Etain ouvré, ou à mettre en oeuvre, Boullets, Canons, Rames, Planches, Mats, Voiles ou Cables faits, ou de quoi faire toutes sortes de cordes, pourront être librement amenées [liberlijk mogen komen sonder Rechten te betalen] comme aussi toutes sortes de munitions de bouche, comme Grains, Harangs, Fromage, Beure, & Biere." This reads like a contraband list but apparently must apply to a list of goods whose importation into Algiers was forbidden by the Dey. The word "contrabande" in Article V coupled with the words "good prize" certainly implies the modern idea of contraband, but this is the first treaty which has been found in which the word is thus used. *Cf. infra*, note 31.

[29] V Dumont II, p. 436.

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XXI. His said Majesty shall deal with other neutral Kings, Princes, States, Towns and Communities, to forbid their Subjects to trade, during this present War, with the Kingdoms and other Possessions of the said King of *Spain*, and of his Adherents, that so they may not run any hazard.

XXII. Which if it cannot be obtain'd, it is agreed, that the Ships which shall be found at Sea, and suspected of taking their Course towards *Spain*, the Isles, or other States of the said King of *Spain*, and his Adherents, shall be oblig'd to stop, to be Known and visited, but not retarded or endamag'd.

XXIII. Trade or Commerce shall in the mean while be open and allowd every where else, thro the Kingdoms, Towns, Lands and Countries of Allies, and of confederated and neutral Princes, without Interruption or Disturbance.[30]

Here one finds not only the contraband list, which was already familiar in the old treaties of alliance, but also the notion of "good prize" and the penalties imposed on the neutral carrier. Nor is this treaty confined to a statement of the respective obligations of the contracting parties; here is a clear notice to neutrals respecting their right to trade. There is to be an attempt to secure neutral coöperation, failing which the parties will resort to a mild visit and search. The contraband list is a broad one, including provisions and raw metals. The treaty is, indeed, a bilateral declaration of the Elizabethan position during the previous Spanish war.[31]

From this time on to the end of the century, treaties dealing with contraband in its modern sense are frequent. Scattered among them are treaties of the old type containing merely promises that the state, or in some cases its subjects and inhabitants, will not aid the enemy of the other party.[32]

[30] 2 *Anon Coll.*, pp. 248, 254; French text in V Dumont II, pp. 478, 480.

[31] Pyke (*op. cit.*, p. 11) and Atherley-Jones (*op. cit.*, p. 9) refer to this treaty as the first to use the word "contraband" in the modern sense. But see the Dutch treaty of 1622 with Algiers, *supra*, note 28. It is interesting to note that the Anglo-Dutch treaty of 1625 was concluded in the year in which Grotius' *De Jure Belli ac Pacis* appeared. At this time, however, Grotius was an exile from Holland, living in Paris.

[32] In this group should be included the treaty of 1630 between France and the Empire (V Dumont II, p. 615, Art. I); the treaty of the same year between England and Spain (Art. IV, 2 *Anon. Coll.*, pp. 275, 281; Latin text in V Dumont II, pp. 619, 621); the treaty of 1632 between Sweden and the German Catholic states (Art. VII, VI Dumont I, p. 29). This last treaty couples the duty not to aid the enemy with the obligation to observe neutrality inviolably and sincerely, and also asserts the general right to trade.

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In the Swedish-Dutch Treaty of Alliance of 1640 there is the usual contraband list (including money, provisions and ships) followed by a general stipulation in Article VII that when one of the allies was neutral his navigation and commerce with the enemy of the other ally should be free except for the restrictions of the contraband trade and trade with blockaded ports.[33] A similar guarantee of free trade, but with neutral places only, is found in Article IV of the Treaty of 1643 between France and the Duke of Courland.[34] Two years later, Sweden and Denmark showed the same solicitude for trade in the Baltic.[35] So also the Franco-Dutch treaty of 1646 emphasized the freedom of trade with the rules of contraband and blockade as exceptions.[36] With Spain, in 1648, the Netherlands concluded a treaty of peace. The stipulation for free commerce, except in contraband, is strengthened by a provision that the neutral government shall certify to the nature of the cargo carried on its ships and that the belligerent shall respect such certificate.[37] There is no contraband list in this treaty but two years later such a list was included. It is confined to arms, munitions etc., and there is a free list which includes grains and foodstuffs. It is expressly stated that trade in free goods may be carried on even with enemy places, unless they be blockaded.[38]

In negotiations for a treaty between England and the Netherlands, carried on at The Hague in May 1651, the English ambassadors included under contraband goods money, shipping and victuals.[39] There was emphasis on the duty of

[33] VI Dumont I, pp. 192, 193.

[34] *Ibid.*, pp. 291, 292.

[35] *Ibid.*, p. 314.

[36] *Ibid.*, p. 342.

[37] VI Dumont, pp. 429, 439. 2 *Anon. Coll.*, pp. 335, 366—"A Particular Article." The subject of certificates and passports is of considerable importance, especially before prize courts, in determining the destination of goods which are in their nature contraband. The subject is not, however, considered here but is the subject of a separate study by the writers.

[38] Articles V, VI and VII of the Marine Treaty of 1650, VI Dumont I, p. 570.

[39] 1 Thurloe, p. 182.

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the state to prevent the inhabitants of its territories from aiding the enemy.

The Anglo-Swedish treaty of peace of 1654 reveals solicitude for the freedom of trade in non-contraband articles. It is clearly stated that non-contraband trade may be carried on with the enemy of one of the contracting parties (Articles XI and XII).[40]

In the same year the Commonwealth concluded a treaty with the Netherlands which reverts to the old style in its undertakings that each government will prevent its people from aiding the enemies or rebels of the other. The list of forbidden articles includes money and provisions.[41] A draft of this treaty, which Secretary Thurloe had prepared, included also as contraband cordage, masts and materials for shipping.[42] On the other hand, the draft proposed by the Dutch ambassador failed to mention these articles in either list, but included money and provisions in the free list.[43]

The Commonwealth's treaty of 1655 with France contains guarantees of free trade in the "Mediterranean, the Eastern Sea, or the Ocean" except in the usual contraband articles, corn and pulse being specially designated as free.[44]

The Hanseatic Towns were always eager to secure protection of their commerce, and one therefore is not surprised to find their treaty of 1655 with France containing specific guarantees to this effect. The contraband list includes "*des Cordages & des Toiles noyales qui ne puissent servir qu'à faire voiles.*" Wheat and grain are on the free list, but France is given a right of preëmption, an idea that was to achieve prominence later.[45]

[40] VI Dumont II, pp. 80, 81.

[41] 3 *Anon. Coll.*, pp. 67, 68; Latin text in VI Dumont II, p. 74.

[42] 1 Thurloe, pp. 704-5.

[43] 3 Thurloe, pp. 32-33. The state papers of the period clearly show how indicative of the economic needs of the two countries their proposals were; see *The First Dutch War, passim.*

[44] 3 Thurloe, pp. 149, 154.

[45] VI Dumont II, p. 103, Art. II. Twiss, *Law of Nations in Time of War* (2d ed., 1875), p. 253, believes this contraband list served as a model for almost all the other treaties in this century. He considers it also a triumph

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The Anglo-Swedish treaty of 1654, just discussed, looked to subsequent agreement on a contraband list. This was found in the treaty of 1656, which strongly reiterates the general right of the neutral to trade. The list includes, besides the usual catalogue of arms and munitions, ships of war and money. It is interesting to note the emphasis placed on money by its allocation to a special clause. One may also note the reference to "merchandize which we commonly call contraband" (*quas Contrabandae vulgo vocamus*), a phrase indicating some sense of a general rule.[46] A supplementary agreement concluded in the same year is of sufficient interest to be quoted *in extenso*:—

WHEREAS in the second article of the treaty concluded at Westminster, *anno* 1656, betwixt England and Sweden, it is declared as a point agreed and ratified by the commissioners of the most Serene Protector, and by the lord ambassador of the most Serene King of Sweden, that only the goods, merchandize, and other things mentioned in that article, should hereafter be deemed as contraband, and publicly prohibited. And whereas the most Serene Lord Protector has proposed by his commissioners, and has stipulated with the aforesaid ambassador extraordinary, that as long as the war continues betwixt the English and the Spaniards, none of the goods and merchandize following shall, under a penalty to be hereafter expressed, be carried from the dominions of the most Serene King of Sweden, to any part of the Spanish dominions; . . . and whereas the aforesaid ambassador said he could not give his consent to the said demand, because he had it not in his instructions from his most Serene King, and therefore left it entirely to the discretion of his most Serene Majesty; it is declared by this writing, that the said second article, if the most Serene King will agree to and ratify it, shall be only ratified upon this condition, That as long as the war continues betwixt the republic of England and the Spaniards, neither his Swedish majesty, nor any of his people, shall carry pitch, tar, hemp, cables, sail-cloth, or masts, to any places in the dominions of Spain, but on the contrary, the said King shall most expressly forbid it; and if any such merchandize shall be carried thither, contrary to this agreement, the same shall be liable to be seized by, and forfeited to the English. Wherefore it is most expressly provided, that if the said King shall not consent to it, then all the said second article relating to contraband goods (as also the third article which depends thereupon) shall immediately become of no force, and the question relating to the specification of contraband goods, shall remain in the state

for the French in that they "secured the consent of one of the Great Maritime Powers to the mitigation of the more severe rule, which made provisions Contraband of War. . . ."

[46] VI Dumont II, pp. 125, 126, Arts. II, III, IV.

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that it was before the time there was any treaty about it at London; nevertheless the rest of the articles shall remain in full force. And moreover, it is agreed and concluded on both sides, by virtue of the several powers granted to them, that although the present article be not inserted in the said treaty, it shall be of the same force and virtue of the treaty itself.[47]

One may note particularly the implication that there was some customary rule for identifying contraband in the absence of treaty. One is also struck by the *ad hoc* contraband list covering the special necessities of Spain. The suggestion that England would buy excess Swedish goods excluded from the Spanish market is interesting; such a plan was tried out in 1918.[48] The subsequent Anglo-Swedish treaty of 1661 puts provisions with money in the contraband list, but has no mention of the articles listed in the special agreement of 1656.[49]

The famous French-Spanish Peace of the Pyrenees of 1659 has a free list which includes all sorts of foodstuffs, including oils, wines and salt. The contraband list is limited to arms and munitions.[50] In 1662 the French treaty with the Netherlands contained identical stipulations.[51]

The Franco-Danish treaty of 1663 shows an interesting attempt to combine the treaty types of the sixteenth and seventeenth centuries. Each king agrees not to aid in any way the other's enemies "*s'ils sont aggresseurs*", and not to permit their subjects to do so. Their subjects must not give aid of troops or money, provisions, arms, cannons, vessels or other things useful in war, "*soit qu'on les leur donne sous pretext du Commerce, ou sous quelqu'autre couleur que ce soit.*" Offenders are to be severely punished as seditious persons and breakers of the alliance. Then it is added, as a qualification to the above, that the hostilities in question shall not stop nor interrupt the commerce of one king with enemies of the

[47] English text as given by Chalmers, *A Collection of Treaties between Great Britain and other Powers* (London, 1790), vol. I, p. 43.

[48] See Jessup, *American Neutrality and International Police* (1928), p. 64 and documents there cited.

[49] VI Dumont II, p. 384.

[50] *Ibid.*, p. 264.

[51] *Ibid.*, pp. 412, 414.

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other.[52] It is evident that the idea that all things may be useful to a state at war was not then prevalent.

The treaty of 1666 between England and Sweden makes the point more clearly. It is explained that the prohibition against aiding the enemy is not to be taken as involving a complete bar to trade but commerce and navigation is to be free in all except articles in the contraband list. The list in this treaty is merely a repetition of that in the treaty of 1661.[53]

Perhaps it is fortuitous, but it may be worthy of note that some treaties, like the two last discussed, first stress the ban against aiding the enemy, making free commerce an exception, while other treaties first broadly affirm the freedom of trade and then mention contraband as an exception. In the latter group is the treaty of 1667 between Sweden and the Netherlands.[54] The treaty's wording affords an interesting indication of the status of the doctrine of contraband at this period; it refers to "*prohibitas Merces* (*quas Contrabandas vocant*)." The free list in this treaty is very complete, including money, grain of all kinds, salt, wine, iron, copper and bronze, as well as sailcloth, ship's timbers and other materials required for the construction and equipment of ships. These latter articles are definitely grouped in the class of raw materials used for war preparations but not yet put into finished form.

In 1667, also, England and Holland concluded a treaty of Peace and Alliance and a treaty of Navigation and Commerce. The former[55] contains the usual prohibitions against aiding the enemy, while the latter[56] strongly states the need for freedom of trade. The third article of the first of these treaties recites that they have not yet agreed on detailed stipulations, but that the Dutch treaty with France [of 1662] "may provisionally serve for a rule and law." The free list is that which is found in most French treaties of the period—grain,

[52] *Ibid.*, p. 470, Art. VI.

[53] VI Dumont III, p. 83.

[54] VII Dumont I, p. 37.

[55] *Ibid.*, p. 44.

[56] *Ibid.*, p. 66.

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oils, wine, salt and other foodstuffs. In the following year a new treaty was concluded, reiterating the stipulation for freedom of trade and duplicating the contraband and free lists of the treaty of 1667.[57]

In 1674, at the end of the Second Anglo-Dutch War, an Explanatory Declaration was concluded to set at rest difficulties of interpretation which had arisen with respect to these treaties. It was declared that the stipulated freedom of trade applied not only to voyages between neutral and enemy ports, but also between two enemy ports, whether these enemy ports belonged to the same or to several enemy states.[58]

The Anglo-Spanish treaty of 1667 [59] is quite similar to the Dutch treaty of the same year in so far as the articles dealing with contraband are concerned. The contraband and free lists are substantially identical.

In 1670, the Danes concluded with England a treaty which resembles the Danish treaty of 1663 with France. As in that prior treaty, there is only a general contraband list and no free list.[60]

The Swedish-French treaty of alliance of 1672 [61] points up an idea that may have been implicit but was not emphasized earlier. Article XXVI of this treaty expressly recognizes that contraband goods can be carried to all except "enemy" nations, thus pointing out the now well-established rule that two elements are necessary to a determination of contraband, namely, character of the goods and destination.[62] The chief point of interest in the free list of this treaty is the repetition of the rule in Sweden's treaty of 1667 with the Netherlands that raw materials "*qui n'ont encore été travaillées*" are not contraband.

It has been noted that in 1667 and 1668, the English and

[57] *Ibid.*, p. 74.

[58] Chalmers, *op. cit.*, vol. I, p. 189. See also *infra*, p. 543, for further treaty of 1674.

[59] VII Dumont I, p. 27.

[60] *Ibid.*, p. 132.

[61] *Ibid.*, pp. 166, 169.

[62] *Cf. supra*, p. 526.

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Dutch had some difficulty in agreeing on contraband lists. In the Marine Treaty of 1674,[63] the contraband list is much the same, but the free list is greatly extended, and, because of many of the items mentioned, deserves quotation in full:

> These merchandizes following shall not be reckoned among prohibited goods, *viz.* all kind of cloth; and all other manufactures woven of any kind of wool, flax, silk, cotton, or any other material; all sorts of clothing and vestments, together with the materials whereof they use to be made; gold and silver, as well coined as not coined; tin, iron, lead, copper, and coals; as also wheat, barley, and all other kind of corn or pulse; tobacco, and all kind of spices, salted and smoked flesh, salted and dried fish, butter and cheese, beer, oils, wines, sugars, and all sorts of salt; and in general, all provision which serves for the nourishment and sustenance of life; likewise all kind of cotton, hemp, flax and pitch; and ropes, sails, and anchors; also masts and planks, boards and beams of what sort of wood soever, and all other materials requisite for the building or repairing ships, but they shall be wholly reputed amongst free goods, even as all other wares and commodities which are not comprehended in the next precedent article; so that the same may be freely transported and carried by the subjects of his said Majesty, even unto places in enmity with the said States, as also on the other side, by the subjects of the said States, to places under the obedience of the enemies of his said Majesty; except only towns or places besieged, environed, or invested, in French, Blocquees ou investies.[64]

It will be recalled that the same two states, just twenty years before, had included money and provisions on the contraband list. Moreover a secret article attached to the treaty of peace concluded between the same parties in 1674 provided that ships, soldiers, sailors, victuals, money and instruments of war should not be furnished to the enemy of one party to this treaty or by his subjects or inhabitants.[65]

The Treaty of Commerce between Sweden and Holland of 1675 contains a typical contraband list, which describes arms, cavalry equipments etc. as contraband "except that they be quite few in number, that thence a probable inference can be made that these things are not destined for war but for other purposes", i. e., perhaps the use of the ship itself. The free

[63] VII Dumont I, p. 282.

[64] English text of Article IV as given by Chalmers, *op. cit.*, vol. I, pp. 177, 179.

[65] VII Dumont I, p. 255.

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list is similar to prior free lists in the treaties concluded by Sweden at this time, specifically referring to raw materials and "other goods which have not yet received form for land or sea warfare, far less those things which now served or are formed for whatever other use." [66]

The next treaty between these same two states, in 1679, includes the above-noted phrase after the non-contraband list, but does not include the phrase quoted above with the contraband list.[67]

In chronological order between these two treaties are the treaty between Spain and the Netherlands in 1676,[68] the Anglo-French treaty of 1677,[69] and the treaty between France and the Netherlands of 1678.[70] The last two treaties contain broad free lists including all provisions, with contraband confined to arms and munitions of war.

In 1689, when the Netherlands and France went to war, the former state issued a declaration advising all allies, friends and neutrals and "generally, all peoples and nations", that they should not carry contraband goods to any French port. The contraband list included in this declaration is confined to weapons "and all other equipments and instruments fashioned and made for war use." [71] In the following year, England concluded with the Netherlands a treaty of alliance against France.[72] The two states agree that their subjects will not be allowed to trade with France, but they go further and say that very many other states are already at war with France and that they too have forbidden or will soon forbid all commerce with France and in view of this fact it is announced that if during the war, subjects of any state are found trading with France, their ships and cargoes will be seized as good prize.

[66] *Ibid.*, p. 316.

[67] *Ibid.*, pp. 437, 439.

[68] *Ibid.*, p. 325; as to contraband, this treaty reaffirmed that of 1650.

[69] *Ibid.*, p. 327.

[70] *Ibid.*, p. 357.

[71] VII Dumont II, p. 213.

[72] *Ibid.*, p. 238.

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This perhaps is not strictly based on any idea of contraband,[73] but is an interesting expansion of the limited ban on trade with France contained in the Dutch declaration.[74]

In 1691 a joint treaty was made by England and the Netherlands with Denmark.[75] Although the treaty is labeled one of Navigation and Commerce, it seems to have been designed to bring Denmark part way into line with projects of the Anglo-Dutch allies. But this was a sign of yielding on the part of the allies, a yielding forced upon them by the fact that three months before, Denmark and Sweden had concluded a treaty providing for joint convoys of their neutral ships, thus creating the first armed neutrality.[76] The treaty concluded by the allies with Denmark did not bring that power all the way into the total ban on French trade; the parties agreed to accept the definition of contraband contained in the Danish edict of May 19, 1691, which included naval stores but not provisions.[77]

The only other treaty which has been found bearing on the matters here under consideration before the end of the century, is that between France and the Netherlands in 1697 which puts provisions on the free list as in the treaty between the same two states in 1678.[78]

From the foregoing survey it is quite clear that the modern idea of contraband of war was firmly established in European treaty law by the end of the seventeenth century. It is equally clear that this idea was developed in the last eighty years of the century and that prior to that time governments had undertaken quite different conventional obligations. It seems to be

[73] Twiss (*op. cit.*, p. 259) considers it to be the establishment of a blockade.

[74] There is here a suggestion of the commercial war which was so extensively waged in the Napoleonic period.

[75] VII Dumont II, p. 292.

[76] Söderquist, *op. cit.*, p. 42.

[77] VII Dumont II, pp. 295, 296; see also Clark, *The Dutch Alliance and the War Against French Trade, 1688-1697* (1923), pp. 32-33, 104, 111.

[78] VII Dumont II, p. 386. The treaties with the Barbary States have generally been omitted from the above compilation since they do not seem to contribute anything to the general development of the subject, because of the special circumstances applicable to dealings with those peoples; see *supra*, note 28.

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evident, however, that this new type of treaty was evolved out of an older type which was essentially that of a treaty of alliance. It remains now to be seen whether diplomatic practice and decisions of prize courts throw any different light upon this development.[79]

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[79] It may be noted that although Grotius is given credit for establishing the triple category of goods and thus laying the foundations for the modern law of contraband, he does not use the word "contrabandum" and, apparently, in 1625 had no notion of precedents to establish the law as it later developed. Like his predecessor Gentilis, he thinks more in terms of the early treaties of alliance and their provisions regarding aid to an enemy. *Cf.* on the views of these writers the analysis of Pyke, *op. cit.*, pp. 42-48.

NOTE: This article is to be continued in an early number of the POLITICAL SCIENCE QUARTERLY.—ED.

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THE GOOD OFFICES OF THE UNITED STATES DURING THE SINO-JAPANESE WAR

WHEN the Sino-Japanese controversy of 1931-1932 changed from a smoldering glow to an angry blaze I had just finished a study of the last major controversy between those two countries, the Sino-Japanese War. In both instances the first reports which the Western world received came from newsmen, but slightly informed as to the long history of the controversy, who tried to find an immediate explanation for a startling development. In both instances a plausible explanation was found in the desire of the military elements in Japan to force an issue, without any apparent realization that public opinion had already crystalized to such an extent that no Japanese government could have continued to rely upon diplomacy alone. In both instances China sought foreign intervention rather than direct negotiations with Japan. And as in the former case the study of all the contributing factors has permitted a rewriting of the contemporary accounts, so we may assume that much which has been written about the Manchurian embroglio of 1931-1932 will eventually be discarded by the historian.

This paper is primarily concerned with the part played by the United States in the diplomacy of the Sino-Japanese War. It will not be possible to develop in any detail the general statements which have to be introduced in order to correlate the actions of the United States with other events at that time. If they seem to contradict many prevalent notions it is probably because they are in many instances based upon unpublished diplomatic correspondence.[1]

[1] A very useful collection of correspondence relating to the Sino-Japanese War may be found in *United States Foreign Relations, 1894*, and Appendix I. But, as might be expected, many valuable papers have been omitted, and very little was printed for 1895. For some reason the dispatches from Mr. Dun, in

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After Japan had entered into treaty relations with the Western nations she was able to secure a reciprocal convention with China, in 1871, and from that time the corner-stone of her Far Eastern policy was friendship with China. It was no easy matter to implement such a policy, for Japan tried to follow the practices of Western international intercourse, while China remained a law unto herself. After Japan was finally able to negotiate a treaty with Korea on terms of equality, in 1876, she added a second stone to the foundation, and that was the independence of Korea. To reconcile these two sound policies was to tax the wisdom and patience of Japanese statesmen, and eventually the decision passed out of the hands of the diplomats. It may be said that the American treaty with Korea, in 1882, was considered by the Japanese as a strong support for their policy, and from that time on the American government never failed to insist upon the independence of Korea, although it did little to back up its assertion.

From 1882 until 1894, and especially after Yuan Shih-kai became Chinese resident in Korea in 1884, the Chinese government, acting through Li Hung-chang, the great Chinese viceroy in Tientsin, interfered continuously and in a most irritating way in the affairs of Korea. The Japanese could not forget that in 1884 Chinese soldiers joined with the Korean mob which drove the Japanese minister and his fellow-nationals from Seoul. Perhaps a sentence from a dispatch of Minister Heard will clarify the situation: "It is a curious fact that it is only since China lost all right to that assumption, if she ever had any, that she claims the vassalage of Corea." [2] A careful study of Korea's foreign relations during this period has been made by Dr. Harold J. Noble, of the University of California, which completely demolishes

Tokyo, were rarely included, and as he was the only career minister of the United States in the Far East at the time, his papers have been found to be of great value. In order to avoid numerous citations the statements found in the papers printed in the above volumes have not been indicated in the footnotes, while the unprinted papers have been referred to by number and date.

[2] Heard to Blaine, No. 75, Oct. 21, 1890.

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any belief in the freedom of China from responsibility for the resulting war.

The status of Korea had been a major concern of Japan ever since 1869, and China's interference had been a constant source of alarm. When, on June 6, 1894, China sent troops to Korea in response to a request of the king for help against certain rebels, Japan, acting upon the terms of the Tientsin Convention of 1885, but with even a better right than China because her treaty with Korea of 1882 permitted her to station legation guards in Seoul, sent in marines and troops of her own. A further explanation given by the Japanese, and a sound one, was that, mindful of the outrages committed by Chinese troops in 1884, they had sent in an equal force to protect their own nationals, not against the Korean rebels, but against undisciplined Chinese troops. The dispatches from the Seoul Legation advised Washington that, when war was inevitable, the Chinese merchants in Seoul feared their own soldiers more than they did the Japanese.

But what was not known at the time, nor known precisely until Count Ito laid the dispatches before the Japanese Diet in October, was that in notifying Japan of the movement of her troops China had referred to Korea as a tributary state. Immediately Japan rejected this pretension, and she joined issue, diplomatically, on the question of the independence of Korea.[8]

At this point it should be said that the State Department was only slowly advised of these developments because of the long time required for dispatches to arrive from Tokyo, Seoul and Peking, and because the American ministers rarely made use of the expensive telegraph. Frequently the Department was informed of events by the Chinese, Korean and Japanese ministers in Washington, who received telegraphic instructions from their governments, before any confirmation was received from its own representatives.

Mr. Dun, in Tokyo, grasped the situation immediately, and on June 14 he wrote:

[8] See Vladimir, *The China-Japan War*, pp. 338-348.

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> It is impossible to believe that so large a force is required in Korea for the protection of Japan's legation, consulates and subjects inasmuch as she already has in Korean ports ten ships of war. The energy displayed by Japan in the despatch of this expedition is evidently intended, if not as a menace to China, at least as a demonstration of her ability and readiness to mobilize a large force in Korea in case Chinese intervention in the affairs of that country threaten the integrity of its government.
>
> The Japanese government has, doubtless, been greatly influenced in its recent action by the very general popular jealousy that exists here in regard to China's influence in Korea and, at this time, that popular sentiment is so strong that the continued intervention of China in Korean affairs may possibly impel this government to take such action as will imperil the peaceful relations between the two countries.[4]

A study of the current Japanese press shows the intensity of this popular feeling, yet the Japanese government, down to the middle of July, hoped for a peaceful settlement of the dispute.

On June 16, Japan advanced to new ground when she linked the reform of Korea with her earlier policy of independence. The proposals which were that day presented orally to the Chinese minister in Tokyo, and formally on the 17th, called for a joint commission to investigate measures of improvement in the Korean financial administration, selection of officials, and army. When China refused to coöperate in instituting these reforms, Japan decided to take the initiative alone, for, as she informed China: "The interests of Japan in Korea, arising from propinquity as well as commerce, are too important and far-reaching to allow her to view with indifference the deplorable condition of affairs in that kingdom." [5]

Acting on *ex parte* information received from the Korean

[4] No. 95, June 15.

[5] Vladimir, *op. cit.*, p. 346. American readers will note the similarity between Japan's interest in Korea, and contemporary American interest in Hawaii and Cuba.

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minister in Washington, Mr. Gresham telegraphed Mr. Sill in Seoul, on June 22: "In view of the friendly interest of the United States in the welfare of Korea and its people, you are, by direction of the President, instructed to use every possible effort for the preservation of peaceful conditions." At this time the Department thought that Japan's policy endangered Korea.

Mr. Sill's reply, while representing his knowledge of the situation, was hardly correct. He assured the Department that he had done and would do as much as possible in the interest of peace. He reported that the Koreans by themselves had suppressed the rebellion—which was not correct. Neither the Chinese nor Japanese troops would retire first, but the Chinese favored simultaneous departure while the Japanese were stubborn. An ulterior purpose was suspected and there seemed to be a desire for war; Korean integrity was menaced. The printed telegram reads, in closing, "The King arduously interceding with Government of Japan." But the telegram as received was: "The King asks your intercession with the Government of Japan."

What Mr. Sill did not know was that by June 22, when he sent off this telegram, Japan had warned China that she would not withdraw her forces until some understanding had been established which would serve to guarantee the future peace, order and good government of Korea. Nor did he realize that Japan's intentions did not threaten the integrity of that country, and he had forgotten that the Korean government, in a panic, had first asked the Chinese to withdraw and they had promised to do so, until the arrival of the first Japanese marines had caused them to change their mind.

In a confirmatory dispatch on June 25, which did not arrive until August 5, Mr. Sill explained that the king had first planned to ask only for the aid of America, but lest any offense be given an appeal was made to all the foreign representatives. The identical letter from the president of the Korean Foreign Office was again *ex parte* and drafted with the desire to support China and place Japan in the wrong. Acting on this request, and without any specific instructions,

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the representatives of the United States, Russia, France and Great Britain addressed a joint note to the Chinese and Japanese representatives in which they submitted the proposal of the Korean government for the simultaneous withdrawal of the troops, and asked them to present the communication to their governments. Both agreed to do so, and on the 26th Yuan Shih-kai replied that his government could not withdraw its troops until the Japanese had done so. As China already knew that Japan would not withdraw until the reform measures had been "established", she should have realized that only the most careful management could prevent a clash between her troops and the Japanese.

The Japanese now acted on their own responsibility, and proposed that Korea set up a special commission to examine the reforms proposed by Japan, "and until these changes are made in a manner satisfactory to Japan the Japanese troops would not be withdrawn." The king and his government, as of old, tried to squirm out of this dilemma, but the Japanese proposals had to be received and a commission was set up to examine them. To anticipate later events we may say that the reports of this commission, which made numerous recommendations while the war was going on, shed the most illuminating light upon the evil conditions in Korea which the Japanese sought to eradicate.[6]

When Japan made this *démarche*, the Korean minister on June 28 again appealed for American intervention, but Mr. Gresham, who was better informed of the real state of affairs, advised him

> that while the United States sympathized with his Government and desired to see its sovereignty respected, we must maintain toward it and the other powers an attitude of impartial neutrality; that our influence could be exerted with Japan only in a friendly way, and that in no event could we intervene jointly with other powers.

But the secretary also telegraphed Mr. Dun:

[6] For the reports see *Foreign Relations, 1894*, Appendix I, pp. 63-68.

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> The United States cherish the most friendly sentiments towards Japan and Korea and in view of the latter, you will ascertain and report Japan's reason for sending military force to Korea and what demands Japan has made upon Korea with the reasons therefor.

And a few days later, in a conversation with the Japanese minister, he remarked

> that in view of the exceptionally cordial relations which for many years had existed between our Governments I felt at liberty to say that it would be very gratifying to the United States if Japan would deal kindly and fairly with her feeble neighbor, whose helplessness enlisted our sympathy.

Mr. Dun's reply of July 3 summarized the purpose of Japan, as we have already indicated it, but pointed out that Japan had ceased the discussion with China, who must now make any advances, and he suggested that the good offices of the United States in Peking might reopen negotiations, or, if instructed, he might offer his good offices through the Chinese minister. Mr. Gresham at once replied on the 7th:

> The government of the United States has heard with sincere regret that although the insurrection has been suppressed and peace prevails in Korea, Japan refuses to withdraw her troops and demands that radical changes be made in the domestic administration of Korea.
>
> The demand is more remarkable in view of the fact that China favors the simultaneous withdrawal of both the Japanese and Chinese troops. Cherishing sincere friendship for both Japan and Korea, the United States indulge the hope that Korea's independence and sovereignty will be respected. You are instructed to say to the Government at Tokyo that the President will be painfully disappointed should Japan visit upon her feeble and defenceless neighbor the horrors of an unjust war.

Even at this late date the State Department did not grasp the fundamentals of Japanese policy. Mr. Dun replied on the 10th:

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> Japanese Government reply as follows: The object of Japan in Korea is not to make war but essentially to insure peace, order, good government and independent sovereignty of Korea in order to prevent recurrence of rebellion. Japan is desirous of the removal of the causes of discontent which are official corruption, peculation, misgovernment. The government of Korea would adopt reforms recommended, but prevented by equivocal attitude of China which endangers peace of the East. The insurrection is not entirely quelled and the cause of it remains. It would be unwise in Japan to withdraw troops at this moment and they are very anxious to do so when future order is assured. There is no apprehension of war with Korea. My opinion is that there is no probability of war between Japan and China.

The last statement was developed in a dispatch of the 14th, which did not arrive until August 6. Mr. Dun counted upon a peaceful adjustment because of China's lack of aggression, and of Japan's desire to avoid a war if she could gain her point by maintaining her position. He very correctly stated: "Unless some unforeseen circumstance should bring matters to a crisis, a war between the two countries is not probable."[7]

China now took alarm. The British minister, Mr. O'Conor, was her spokesman, and on July 3 he asked Chargé Denby to telegraph Washington to ask the American government to take the initiative in a joint protest to Tokyo against the commencement of hostilities by Japan. Mr. Denby refused to do so unless the Tsungli Yamen requested it, but he did send off an informatory telegram that day: "Korean situation critical; hostilities imminent. Chinese government shows conciliatory attitude in spite of aggressive action of Japan, and asks good offices of England, Russia to secure peaceful solution."[8] But, as often happened, the initiative was taken by Li Hung-chang, who frequently handled China's foreign

[7] No. 112, July 14. This was a long dispatch, so informatory that it should have been printed in *Foreign Relations*. It closed with this accurate forecast: "The Japanese Government cannot now draw back. They have committed themselves to a task that the nation insists shall be accomplished."

[8] At this time he expected a peaceful settlement. See his dispatch of July 6.

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affairs in complete independence of the Tsungli Yamen. He advised Consul Read, at Tientsin, of his desire that Denby telegraph Washington to take the initiative in urging the powers to unite in a request to the Japanese government to withdraw their troops from Korea. Denby received Read's telegram on the 7th and repeated the substance to the Department on the 8th.

It will be observed that this intervention as formulated in Peking and Tientsin was directed against Japan. There is no indication in Denby's dispatches that he understood that Japan would not withdraw her troops except under conditions which she had laid down. And there is a good reason to believe that if the powers had given a friendly advice to China to coöperate with Japan in instituting reforms in Korea the approaching war would have been averted. At the same time the Russian minister in Tokyo urged the simultaneous withdrawal of both forces, but he was satisfied when Japan gave assurances that she sought no territorial aggrandizement and would withdraw her troops when order was established.[9]

Acting on the Chinese request, Great Britain instructed the British ambassador to ascertain whether the United States would unite with Great Britain in an intervention to avert war between China and Japan. When he read this instruction to Mr. Gresham on July 8, he added that in his belief only a friendly intervention was contemplated. But he was advised that the United States could not intervene otherwise than as a friendly neutral; that it had already so intervened with Japan; and that the president would hardly feel authorized to go further in the exercise of good offices. The next day, when Mr. Gresham handed him a copy of the instruction to Mr. Dun of the 7th, he added "that this Government could not join another power even in a friendly intervention."

The last attempt of China to secure American intervention was made by her minister in Washington on the 13th, when he reported an instruction from Li Hung-chang to express the hope that the United States would instruct its minister at

[9] Minister Tateno to Gresham, July 7 and 16.

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Tokyo to unite with other diplomatic representatives there in a joint effort to influence Japan to abandon her warlike purposes against China. Mr. Gresham replied much as he had done to the British ambassador, but he also pointed out "that a course was open to China which had been adopted by other powers, namely, to offer to settle the controversy by friendly arbitration."

Thus the United States escaped being drawn into a joint intervention which would have been aimed at Japan alone.

The Japanese government knew of these attempts of China to enlist foreign support. It had already intimated to China that it would brook no interference on her part with the reform measures in Korea.[10] On July 9, China reopened the discussion with a statement which is not accessible, but which probably deprecated the reforms insisted upon by Japan. To this a reply was given on the 14th which repeated in clear terms the policy of Japan, and regretted the refusal of China to take part in conjoint measures of reform, while she insisted upon the withdrawal of the Japanese troops.

> The only conclusion deducible from these circumstances is that the Chinese Government are disposed to precipitate complications; and in this juncture the Imperial Japanese Government find themselves relieved of all responsibility for any eventuality that may, in future, arise out of the situation.[11]

This was the last warning to China. When it was ignored, and China (or rather Li Hung-chang) took steps to reinforce the Chinese troops in Korea, the "unforeseen circumstances", which Mr. Dun had feared, occurred. As China had repeatedly asserted that the rebellion in Korea had been suppressed, the only explanation of her action in sending over additional troops was to prevent the reform measures insisted upon by Japan. And this the Japanese government would not tolerate for a moment.

War now seemed inevitable. As early as June 29, Mr. Dun had telegraphed an inquiry as to whether, in the event of the

[10] Reported by Dun, No. 111, July 13.

[11] Vladimir, *op. cit.*, pp. 347-348.

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withdrawal of the Japanese minister from Peking, the United States would use its good offices to protect Japanese archives and subjects in China, and he had been told that if a formal request were made it would receive the president's friendly consideration, but would only be granted with the consent of China. On July 19, after the Japanese warning, the Chinese minister asked Mr. Dun to assume the protection of Chinese subjects in Japan. This was gratifying to the Japanese government, which made a similar request of Chargé Denby in Peking. Both sides were now preparing for war.[12]

Events now moved with startling rapidity. In conformity with an old Korean custom, the Japanese invaded the palace at Seoul on July 23, and took control of the king, placing in charge of the administration the king's father and former regent, the Tai Won Kun, who in the past had despised the Japanese and all foreigners but who now hated China more. On the 25th hostilities broke out off Asan, between two small Chinese ships and three Japanese, and a few hours later the British transport *Kowshing* was sunk when the Chinese troops on board refused to surrender. A state of war was declared by both governments on the 31st, and the formal Imperial proclamations were issued on August 1.

Nothing could afford more convincing testimony to the respect which these belligerent powers held for the United States than their request that she protect their nationals in the other country during the hostilities. In Korea, however, Great Britain, which had been a strong advocate of China's claims there, was asked to protect China's interests. The exercise of these duties was a very simple thing in Japan. By Imperial ordinance, on August 4, the Japanese government assured the Chinese of good treatment, on condition of

[12] When Denby asked for permission to protect Japanese interests in China, the Yamen expressed its pleasure that the United States had been chosen, and stated that they had proposed to ask him to telegraph a request that the United States assume the protection of their interests in Japan, at the suggestion of Minister Wang of Tokyo. Due to the interruption of communications because of a flood Denby could not telegraph China's assent and her request until July 24. The Department gave its approval. A second request was sent, on behalf of the Yamen, on the 28th.

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registration, and there is no record of any American intervention to protect Chinese or their property in Japan during the war. Mr. Dun was called upon to handle certain communications between the two governments looking to the exemption of private merchant ships from capture, which fell through because the Chinese did not release their first prize, as they had promised. He also presented a request, from Sir Robert Hart through Chargé Denby, that Japan agree not to interfere with Chinese lighthouse tenders, which Japan refused on the ground that there could be no satisfactory guarantee that the vessels might not be employed in transporting contraband, and because China had already extinguished lights along her coast. He refused to present a request, which came directly from Denby, that Japan exempt two customs cruisers from molestation, on the ground that he could only serve as a channel of communications between the two governments.

But in China the protection of Japanese assumed a very serious aspect. In the first place there were at least 5,540 Japanese in China, and only 1,107 Chinese in Japan. While most of the former were located in Shanghai and the treaty ports, some were engaged in business and study and, probably, after war was declared, in espionage. While Western missionaries in the interior wore Chinese dress, and often the queue, Japanese were denied this costume by the Treaty of 1871, although, as so often happened in China, they had worn it in the past without objection. But Japanese in Chinese dress were bound to be objects of suspicion. In addition, the rewards which had been proclaimed for the heads of Japanese and for the denunciation of spies, coupled with the uncertainty and severity of Chinese justice, caused all foreigners to oppose the surrender of Japanese to Chinese hands. And they were ever mindful of their own interests, in case one of their countries should become involved with China and the surrender of foreigners should be demanded from the settlement authorities.

The *cause célèbre* was the case of two Japanese youths in Shanghai, who were denounced by the Chinese and arrested

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in the French concession. They were turned over to the American consul and both he and Chargé Denby tried to hold them until guarantees of safe trial could be obtained. But Mr. Gresham quite correctly held that the right of protection carried with it no judicial functions, and the Japanese had lost their extra-territorial privileges when war was declared. Under specific orders, the Japanese were surrendered, to be tried, found guilty and beheaded. It should be said that the Chinese minister had given an assurance that no action would be taken until Colonel Denby, the American minister, returned to China, but this promise was not respected. This affair involved the Chinese minister in an exchange of letters with Mr. Gresham, in which he tried to excuse himself on the ground that he had given only a personal assurance, but Mr. Gresham and Mr. Rockhill flatly denied the validity of this excuse.

Although this case caused much excitement among foreigners in China, and much outspoken criticism of the American government, there was no protest from Japan, for the Imperial government recognized the soundness of Mr. Gresham's position.

Aside from the "Tongku outrage", which brought from Li Hung-chang a disavowal and promise to punish the guilty parties, seven cases of protection or intervention were reported. At Tientsin a Japanese spy, found guilty on the evidence of his Chinese accomplice, was executed in spite of the plea of the American consul for his release. At Nanking, which was not a treaty port, no effort could be made to protect an alleged spy. The consul at Ningpo tried to secure delay for the investigation of the charges against a Japanese arrested at Chinhai, but this was refused. But at Hankow, before the order to surrender alleged spies to Chinese officers was received, a Japanese was given safe conduct to a river steamer bound for Shanghai. Similarly a Japanese student was safely escorted from Peking to the U. S. S. *Monocacy* as late as October, but a custodian of the Japanese legation was thrown into prison. The fate of the two spies at Shanghai has been narrated. After the defeat of the Chinese armies in

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Manchuria and their retreat toward Peking, the protection of foreigners in North China became a matter of great concern among the foreign ministers, and a heated controversy arose with the Chinese government as to the right to bring in legation guards.

From the outbreak of hostilities one disaster followed another, and China was soon confronted with the necessity for peace. Li Hung-chang had been impeached by his jealous rivals even before war had been proclaimed, and when the naval defeat off the Yalu was reported he was stripped of his three-eyed peacock feather and yellow riding jacket. An unprinted dispatch of Chargé Denby, of November 16, gives an appalling picture of the ignorance, inefficiency and corruption which permeated all Chinese official circles, in marked contrast to the patriotic fervor which animated the Japanese people and the unsuspected effectiveness of all their military and naval dispositions. Li Hung-chang was now fighting not only for a dynasty which had turned against him, but for his place and power and life itself. Peace had to be speedily obtained, but how?

With the expulsion of the Chinese from Korea the first objective of the Japanese had been realized. The advance of their conquering armies across Manchuria might mean, in the spring campaign, the invasion of Chihli and the overthrow of the dynasty. Neither Great Britain nor Russia could contemplate such an issue with equanimity, for the Far Eastern policy of each called for the maintenance of the Dragon Throne. The British and Russian ministers now came forward as mediators, and the return of Prince Kung to the direction of the Tsungli Yamen indicated a more reasonable attitude on the part of the government. Chargé Denby reported, on October 23, that China was ready to make peace on the basis of her recognition of the independence of Korea and the payment of a war indemnity. But he was by no means favorable to "a forced termination of hostilities at present".[18] China had not yet learned the lesson she so much

[18] No. 2004, Oct. 23, 1894. The first steps taken by the British and Russian

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needed, and not until the dynasty was actually threatened should foreign powers intervene.

On October 6, the British ambassador, Mr. W. E. Goschen, writing from the summer embassy at New London, inquired, under instructions, whether the United States would be willing to join with Great Britain, Germany, France and Russia in intervening between China and Japan: "The basis of such intervention would be that the independence of Korea would be guaranteed by the powers and that Japan should receive an indemnity for the expenses of the war." Mr. Gresham again replied that the United States could not join the powers in a joint intervention. This led Goschen to ask for new instructions to the effect that the intervention contemplated would be limited to diplomatic action and would take place only in the event of a suitable opportunity arising. It should be observed that not only the proposal for a joint intervention, but also the proposal to unite with other powers in guaranteeing the independence of Korea, was repugnant to the American government.

Great Britain then approached Japan alone, and proposed mediation on the basis outlined to Mr. Gresham. The Japanese reply, which was given on October 25, was to the effect that "affairs have not made sufficient progress to insure a satisfactory result of negotiations", and they were not ready to set forth their peace terms at this juncture.[14]

China then appealed to the United States directly. On October 31 Mr. Denby visited the Tsungli Yamen on another matter and Prince Kung and the ministers invited him to a private conference during which the prince read the first article of the American Treaty of 1858 which promised the exercise of American good offices, and proposed to make a direct appeal to the United States to intervene, as a mediator,

ministers occurred soon after the defeat at Phyong-Yang on September 15. Minister Denby returned to his post on October 27, and subsequent dispatches were prepared by him.

[14] Chargé Denby telegraphed Japan's rejection of the British overtures, on October 27. Mr. Dun did not send the text of her reply until his No. 194, November 16. Denby understood it was given on October 25.

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and to ask Japan for an armistice and ultimately peace. Colonel Denby agreed to transmit such a statement to the secretary of state. Then followed an almost pathetic discussion, in which Denby pointed out that China's inconsistent attitude toward Korea had been at the bottom of the war, and that some settlement of that problem should be offered as an inducement to secure peace. In response to his inquiry the ministers agreed that China would consent to the absolute independence of Korea, and proposed to place their declaration in writing. "This interview lasted more than two hours. The state of mind of the ministers bordered on despair." [15]

The telegram was not sent forward until November 3, perhaps because Denby waited for the written assurances of the Yamen; before it was sent, the ministers had changed their minds, and now asked for the intervention of the five Great Powers. On that day, November 3, the representatives of the United States, Great Britain, France, Germany and Russia were summoned to the Yamen and the request for mediation was presented. The basis of negotiations would be the independence of Korea and the payment, by instalments, of a war indemnity (the amount to be decided conjointly by the foreign powers friendly to China). As Prince Kung failed to mention the fact that Great Britain had already offered mediation, he was questioned on this point by the British and French ministers and he admitted that such an attempt had been made about the middle of October, on the basis of the independence of Korea and the payment of an indemnity. As the rejection by Japan had not been positive, he believed that she might now accede to it if all the Great Powers united in urging it. The representatives agreed to forward the proposal to their governments and to recommend mediation.

Colonel Denby combined the two requests of October 31 and November 3 in a single telegram, and added: "This is a special appeal to you." He had hesitated to make the recommendation for joint mediation, having learned by common report that Mr. Gresham had already declined to join in the intervention proposed by Great Britain.

[15] No. 2210, Oct. 31.

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Denby's telegram arrived on the night of the 5th, and before it was laid before Mr. Gresham the former had decided upon an offer of the president's good offices, which offer went forward on the 6th. His action was due to the repeated requests of the Chinese minister, and to his belief that Japan would understand and appreciate the gesture. The telegram to Denby read:

> President directs that you intimate his readiness to tender his good offices towards bringing war to a close on terms alike honorable to both nations should he be assured that such a tender would be acceptable to both.

And to Dun:

> The deplorable war between Japan and China endangers no policy of the United States in Asia. Our attitude toward the belligerents is that of an impartial and friendly neutral, desiring the welfare of both. If the struggle continues without check to Japan's military operations on land and sea, it is not improbable that other powers having interests in that quarter may demand a settlement not favorable to Japan's future security and well-being. Cherishing the most friendly sentiments of regard for Japan, the President directs that you ascertain whether a tender of his good offices in the interests of a peace alike honorable to both nations would be acceptable to the Government at Tokyo.[16]

A second telegram to Denby, later in the day, advised him that the first instruction had been sent before Denby's telegram had been received. China's request to the great European powers might somewhat embarrass the president's freedom of action, and Denby was now informed of the British proposal of October. The president hoped that his sole offer of mediation might prove acceptable to both belligerents, when he would gladly aid them by conference at Washington or in any other practicable way. A third telegram, of the 8th, stated that while the president preferred to act alone, he

[16] This was the second warning Gresham had given Japan of the danger of unfavorable European intervention. The telegram had been shown to Minister Kurino and approved by him before it was sent.

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would not decline to act jointly with other powers simply in determining the amount of indemnity, if Japan consented to such an arrangement.

The Chinese were now embarrassed by their own vacillation. At first some of the ministers were anxious to accept the president's offer immediately, but they decided that they must wait for the replies from the European governments. To Denby's protest that their conduct was contradictory and embarrassing, they gave a frank admission, adding in extenuation "that their condition was such that they were compelled to look for aid wherever they might hope to find it."[17] Denby telegraphed their reply on the 10th.

The Japanese reply was delayed because the premier, Count Ito, and the minister for foreign affairs, Viscount Mutsu, were in attendance on the emperor at his headquarters at Hiroshima. The delay caused Mr. Gresham to send out a telegram of inquiry on the 13th. On the 14th the ministers returned to Tokyo, a cabinet council was held on the 16th, and Dun was able to telegraph on the next day:

> Japanese Minister for Foreign Affairs requests in the event of China desiring to approach Japan upon the subject of peace it shall be done through the legation of the United States at Peking.

He also telegraphed the text of the verbal note handed to him by Viscount Mutsu, which in part read:

> The universal success which has thus far during the conflict attended the arms of Japan, would seem to relieve the Imperial Government of invoking the cooperation of friendly powers to bring about a cessation of hostilities.
>
> The Imperial Government have no wish to press their victories beyond the limits which will guarantee to them the just and reasonable fruits of the war. Those limits can not, however, be said to have been reached until China finds herself in a position to approach Japan directly on the subject of peace.

[17] No. 2030, Nov. 19.

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It will be noted that whereas Japan, on October 25, had not thought the time ripe for negotiations, by November 17 she was willing to receive proposals directly from China. But long experience with China had warned her against foreign intervention—she would deal directly with China, and with China alone. Every delay would be harmful to China, for Mr. Dun reported that terms which would have been acceptable to Japan some months ago would not be favorably considered then.

Mr. Gresham promptly sent off this information to Denby, on the 19th, and notified Minister Yang Yu, in Washington, on the 20th. He also explained the views of the president as to mediation in an instruction to Denby of the 24th.

When Colonel Denby advised the Yamen of the Japanese proposal, on the 21st, their first reaction was that Japan had taken this step because of reverses which she had received at Port Arthur—for even at that late date they could not evaluate the reports of their military commanders.[18] As a matter of fact, Port Arthur fell that very day. So on the 22d, they submitted the bases for negotiation to Denby, who at once wired them to Dun: "Please deliver following Secretary of State for Foreign Affairs of Japan: China authorizes and requests me to make direct overtures for peace. Basis, the recognition of the independence of Korea, payment reasonable war indemnity."

But at this juncture, as on many other occasions, Li Hung-chang proceeded to act on his own initiative. Before the Yamen had acted on the president's offer, or word had been received of Japan's reaction, on November 18 he sent Mr. Detring, a German subject then commissioner of customs at Tientsin, to Japan with a personal letter to Count Ito, which referred to an Imperial command that Li send him to effect a settlement. He arrived at Kobe on the 26th, but as he was not properly accredited Ito would neither receive him nor recognize him. He withdrew from Japan on the 29th.[19]

[18] Denby reported this interview as on the 20th, which is obviously incorrect, just as his later report of the fall of Port Arthur on the 22d.

[19] Denby received no intimation of this *démarche* from the Tsungli Yamen.

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From this time all communications between China and Japan looking for the inauguration of peace negotiations passed through the hands of the American ministers at Peking and Tokyo. There is only space here to refer to the more important ones.[20]

Denby's telegram of the 22d was handed to Viscount Mutsu on the 23d, and the Japanese reply was transmitted by Dun to Denby on the 26th.

> The proposals made by China through the United States representatives at Peking and Tokio cannot be accepted by Japan as a basis for peace. In the present circumstances China does not appear to be in a mood in which she is likely to accede to a satisfactory basis for peace but if she is really solicitous for peace and will appoint properly qualified plenipotentiaries for the purpose Japan will upon the meeting of the plenipotentiaries of the two countries declare conditions upon which Japan will consent to a termination of hostilities. You are requested by the Japanese Minister for Foreign Affairs to keep these communications secret and confidential. British Minister at Peking telegraphed your communication to me to British Minister here.

In this reply two points are significant. Japan insisted upon the appointment of "properly qualified plenipotentiaries" and she would expose her peace conditions only when the peace commissioners met. Neither of these very proper requirements pleased the Chinese. From the time he delivered this reply to the Yamen, on the 28th, until the very end of the subsequent negotiations, Denby was forced to state, over and over again, that he was not a mediator nor could he serve as a peace commissioner for China, nor could the president serve as a mediator without Japan's consent. At most the American minister was only a medium of communication, yet his friendship for China and his pity at her sad plight led him on many occasions to offer friendly advice, which on the most critical occasions was blithely ignored.

[20] These very illuminating documents may be found, for the most part, in my *Diplomatic Relations between the United States and Japan, 1853-1895* (2 vols., Stanford University Press, 1932).

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China's reply, on the 29th, was to the effect that she found difficulty in appointing an ambassador until Japan should indicate in a general way the questions which would be discussed. This brought a stern warning from Japan, on December 2, that unless China accepted the two conditions laid down by Japan "the matter must end."

Denby then tried to show the Yamen what was necessary under the circumstances—they must either refuse to appoint an envoy, or notify Japan that one would be appointed. He even drafted a reply for them to send. And in the dispatch which reported this discussion, he wrote:

> . . . the ignorance and helplessness of these people pass all comprehension. International Law is a sealed book to them. They know nothing of foreign methods or foreign countries. A species of adroitness of which they avail themselves is not at all useful in the great crisis which confronts them. They know nothing of such diplomacy as war demands.

It was because of their trust in the excessive friendliness of the United States and their "piteous and helpless reliance" that he was acting as an adviser when he should only be an intermediary.[21]

In spite of China's urgent need of peace, she delayed to take the next step. Denby could not learn whether this was due to the inability to select an envoy, for Li Hung-chang had been consulted, or to efforts to secure European intervention. On the 11th he was able to transmit a reply which stated that China would appoint a minister plenipotentiary with full powers, and that she suggested Shanghai as the place of meeting. She desired to know when the plenipotentiaries would meet.

The Japanese reply was delayed because of the division of the cabinet between Tokyo and Hiroshima, but on the 18th Japan stated that the name and rank of the Chinese plenipotentiary must be given before Japan would appoint her own, and that the meeting place must be in Japan. Mr. Dun also sent a private advice to Denby to the effect that China should

[21] No. 2048, Dec. 8.

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appoint a plenipotentiary of the highest rank, with full powers, if she desired to end the war. Of course this was due to the fact that unless the peace commissioner was of sufficient standing to secure the ratification of his engagements the negotiations would fail. China refused to take this warning seriously.

It was now necessary for Colonel Denby to instruct the Yamen as to the next step. Although more than a week had passed since they had announced that they would appoint an envoy, none had been chosen. And the demand that the conference take place in Japan filled them with alarm. Li Hung-chang refused to go to a foreign country. There was also the probability that any negotiator signing an unfavorable treaty would lose his head as a scapegoat. Denby suggested that a clause be inserted in the treaty to provide against the negotiators being held responsible, or suffering any injury, because of any act done in connection with the negotiations. He also had to repel the suggestion that, should the negotiations fail, the Chinese envoy would be in jeopardy in Japan. He strongly hinted that Li Hung-chang should be named, and he even drafted a reply which might be sent. After he had left them it occurred to him that Li might possibly be willing to serve if Seoul were named as the meeting place.

The next day, the 20th, China made her reply. Her envoys would be Chang Yin-huan, a member of the Tsungli Yamen and junior vice-president of the Board of Revenue, and Shao Yu-lien, vice-president of the Board of War and acting governor of Hunan. She now hoped that an armistice would be arranged as soon as Japan had appointed her plenipotentiaries, and she suggested Nagasaki as the place of meeting.

While Chang Yin-huan might have been acceptable as a junior member of a peace delegation, the selection of Shao Yu-lien, an official of inferior rank and the man who, as governor of Formosa, had issued a proclamation offering rewards for Japanese heads, was most inappropriate. Japan, however, did not question the qualifications of the Chinese envoys. She designated Hiroshima as the meeting place, and announced that, should she decide to grant an armistice,

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the terms would be made known after the meeting of the plenipotentiaries.

At this time Mr. Dun reported that the Japanese cabinet desired to end the war, but that their greatest difficulty would be found in the opposition of the military men to reasonable terms. "Their ambition can be satisfied with nothing less than the occupation of Peking and the complete humiliation of China." Neither Dun nor Denby had, as yet, any intimation that a cession of continental territory would be demanded. And it is interesting to note that Dun believed that General Count Yamagata had been recalled from the command of the First Army in order to strengthen the hands of the government and counteract the opposition of the military element.[22] This was not the first time when, contrary to the prevalent notions, General Yamagata was called upon to act as a restraining influence.

The Chinese now desired the Japanese to name their plenipotentiaries, and Denby sent a personal communication to Dun urging that this be done, "to save China's face." But on the 31st, Japan replied that she saw no necessity of notifying the name and rank of her plenipotentiary or plenipotentiaries in advance. Mr. Dun, however, was able to give the assurance, in a private telegram, that China need have no apprehension as to the rank of the Japanese representatives; in fact he gathered that Mutsu would be one of them.

Again we would expect China to expedite the departure of her representatives, for she cruelly needed peace. Colonel Denby had prepared drafts of letters of credence, according to the most approved forms, only to find that the Yamen had drawn up "a very peculiar instrument" of their own, which was never submitted to him. He promptly reported this to Mr. Gresham, but not to Mr. Dun, in order to be relieved from any responsibility.[23]

As Denby had urged the Yamen to send a foreign adviser with the peace commission, Mr. John W. Foster, formerly

[22] No. 211, Dec. 28.

[23] No. 2110, Jan. 22, 1895; No. 2124, Feb. 6.

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secretary of state, was invited to serve on December 23, and on January 21 he reached Yokohama. He was forced to wait at Kobe for eight days until the Chinese envoys arrived on the 30th. He also believed the appointment of Shao unfortunate.

While the Japanese were waiting for the Chinese commissioners to arrive, they received an intimation that the latter's credentials were not in proper form. At Mr. Hayashi's request, Dun telegraphed Denby on January 19 for information, if he felt at liberty to give it, as to whether they had full powers in the European sense. The latter refused to take the responsibility of construing the letter of credence, but he said that the words "plenipotentiaries with full powers" appeared therein. Japan herself must decide as to their qualifications.

What happened when the plenipotentiaries met at Hiroshima on February 1 is well known. The Chinese credentials were, as would be expected, found inadequate, and they could not be accepted. On the 4th the Chinese commissioners left for Nagasaki, en route to Shanghai.

Many historians, however, have entirely missed the significance of these events. Relying upon Mr. Foster's statement, they have accused Japan of bad faith, and of the desire to delay the negotiations until after Weihaiwei had been captured. But after an examination of the dispatches from Dun and Denby, and the telegrams exchanged between them, no one need have any question as to where the bad faith lay. Denby did not hesitate to tax the Yamen with duplicity, and when he drafted a telegram to Chang Yin-huan stating that letters of credence would be sent him, the Yamen coolly struck out the words "of credence". In reporting this interview, Denby made this illuminating statement:

> It is impossible to say with certainty to-day that China wants peace. She still has an idea that the foreign powers will intervene to save her from ruin—an idea to which some force has been given by the frantic and foolish conduct of people who ought to have known her better. *If China knew to-day*

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that the world would stand aside and let her fight her own battle she would instantly make peace.[24]

And it should also be said that the Weihaiwei operations had no influence upon the Japanese decision, for no armistice would have been granted except on condition of the surrender of that beleaguered fortress.

The Japanese refused to resume negotiations with the discredited commissioners, even should adequate powers be sent them. It was now necessary for China to start all over again. At this crisis the emperor addressed an autographic letter to the president begging him to instruct Colonel Denby to advise China as to the clauses of the proposed treaty. This arose from the mistaken idea that the United States was acting as a mediator under the terms of the treaty of 1858.

Finally, on February 16, Colonel Denby was able to telegraph Mr. Gresham that Li Hung-chang had been appointed sole plenipotentiary. His honors had been restored to him and he would soon visit Peking. While it was not certain whether he would accept the post, it was presumed that he would be forced to do so.

But before this telegram was sent, Mr. Dun had, on the 17th, transmitted a statement for Japan that negotiations would be useless unless the Chinese plenipotentiaries were prepared to negotiate not only on the basis of the complete independence of Korea and a war indemnity, but of a cession of territory and of an agreement to conclude definite treaties for the regulation of future intercourse.

Denby had prepared a telegram advising Japan of the appointment of Li Hung-chang on the 18th. He held it until he could convey Dun's last telegram to the Yamen, and at their request sent it forward on the 19th. But in it he stated that Li would have "credentials [or letter of credence?] giving him full powers to conclude and sign treaty." This

[24] No. 2124, Feb. 6, 1895. Italics are mine. On this day the conversations began at the British Foreign Office with the Russian ambassador which, after many ramifications, resulted in the intervention by Russia, France and Germany in April. See Joseph, *Foreign Diplomacy in China, 1894-1900*, p. 78.

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caused Japan to request a telegraphic statement of the exact wording of the full powers. Denby first sent the Chinese text of two notes and a draft of the letters patent, but offered to send an English translation if the Japanese could not translate them. Promptly the Japanese asked for an official English translation, which Denby sent on the 26th.

By this time Japan was very suspicious of the good faith of the Yamen, and a comparison of the Chinese texts and the English translations did not remove their apprehension. They therefore insisted upon certain amendments in the English text of the letters patent, which were complied with. The place of conference was now fixed as Shimonoseki.

Aside from handling the arrangements for the safe conduct of the vessels transporting the viceroy's party, the good offices of the American ministers in arranging for peace negotiations ceased, but they were to be resumed again in connection with the exchange of ratifications.

As Colonel Denby's dispatches shed considerable light upon a very interesting phase of the later negotiations they might be examined here. Li Hung-chang arrived in Peking on February 21. His audience with the emperor the next day was satisfactory. That afternoon, accompanied by two ministers of the Yamen, he called upon Colonel Denby, and he immediately asked him to help China and to get his government to persuade Japan to end the war. Denby had to go over the ground which he had traversed with the Yamen "fifty times" before, that he was not a mediator but only a transmitter.

This was probably the first of the visits to the several foreign legations which eventually laid the foundation for the Three Power intervention. "He puts to each Minister the question: Will your Government intervene if China refuses to grant a cession of territory?" From the American and British ministers Li received no comfort. The Russian, French and German listened more sympathetically to the plea which Denby had rejected. In Denby's belief, the representatives of these powers did no more than hold out indefinite hope for intervention after the peace. As we know, the joint

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intervention was arranged by the home chancelleries. But as late as February 26, Denby did not believe Japan would ask for more than a concession in some of the Chinese treaty ports, although she might demand Formosa and the Liaotung Peninsula. He was annoyed at the hopes held out by his colleagues.

> I have told them again and again, that had it not been for this phantom of assistance to China, I would have made peace two months ago. As long as China thinks that at the crucial moment English, or Russian, guns will be turned against Japanese ships, she will delay direct action.

And he saw into the future when he added:

> To my view there is no good for China in foreign intervention. It is more likely to produce dismemberment than any action that may be taken by Japan. Unless Russia, and England, and France are more disinterested than history shows them to be they will each demand heavy compensation for any services rendered to China.[25]

It will be observed that he thought Great Britain was supporting China, as in the past, and he had no intimation of any German activity.

On the 26th, Li called upon him again, and claimed that China had not stated that he should agree to cede territory, but simply that he should discuss the question.

> I told him that it was exactly because I was not sure of the meaning of the telegram that I sent it in the Chinese text, but if it meant simply to discuss the question, and if China adhered to that view, he might as well go home, Japan having announced in the telegram of the 17th February that no plenipotentiary would be received unless he were pledged to agree to cede territory. I told him it was of little use for him and me, and our interpreters, to agree about the meaning of the telegram, because Japan would construe it for herself, and we would have her answer in a day or two, as I had already sent the English text to Japan.

[25] No. 2148, Feb. 26.

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And Denby gave Li this sound advice:

> I said that it seemed to me that he should turn his back on European powers and turn his face to Japan; that policy dictated a complete abandonment of the idea of trying to secure intervention; that he should reason with Japan that if she crippled China her trade and commerce would suffer; that he would use all the arguments drawn from geographical situation, national analogies and commercial interests to induce Japan not to dismember China; and he should strenuously endeavor to save from cession any of the main land.[26]

We now know that Li did make use of similar arguments when he pleaded the cause of China, but he could not give up the hope of European intervention. In the final interview on March 3, Denby outlined a constructive program which should be introduced after the war.[27]

The story of the negotiations at Shimonoseki is now well known. When the Tsungli Yamen found the armistice terms too drastic, the members called upon all the foreign ministers for advice. Denby told them frankly that the terms should be accepted, if better could not be obtained; but he thought they were using the Japanese demands as an argument for intervention.[28] China, however, refused the Japanese terms, and a more favorable armistice was granted after the assault upon Li Hung-chang.

After the treaty was signed, and the Three Powers had intervened, and Japan had promised them to restore the Liaotung Peninsula to China, she insisted only that the treaty be ratified and exchanged as it provided. China tried to delay the exchange of ratifications at Chefoo until Japan had restored the Liaotung Peninsula. The several telegrams were exchanged through the American ministers. Finally, on May 7, the ministers of the intervening powers assured the Yamen that they were satisfied with Japan's promise to restore Liaotung, and that China must immediately exchange

[26] *Ibid.*

[27] No. 2153, March 5.

[28] No. 2176, March 23.

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ratifications of the treaty, under penalty of withdrawal of further assistance.[29] As a result of this warning, the exchange took place the next day, at Chefoo.

While this brief résumé outlines the good offices of the United States and its representatives during the Sino-Japanese War, it also indicates that no little light upon the whole controversy may be found in the American dispatches from Tokyo and Peking. One reason why former writers who have relied upon the published dispatches have set forth an ill-balanced presentation is because, for some unknown reason, most of the dispatches which were printed were those from Peking, while very few of Mr. Dun's briefer but very informing reports were made public. The incidents narrated above will explain why Japanese diplomats, trying to follow the practices of international intercourse, should then, and even now, be reluctant to accept Chinese assurances at their face value, and why they should object strenuously to any foreign intervention in their dealings with China.

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[29] No. 2219, May 9.

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GERMAN POLITICAL INSTITUTIONS

II. Article 48

WRITING at the time of the dismissal of the Brüning government, when the presidentially supported von Papen cabinet was described as being composed of "monocled caretakers", one seemed to be justified in saying that events in Germany "marked the end of a period" and that only the future would show whether they "marked the end of a régime."[1] Subsequent developments have demonstrated that this judgment was not uncautious and have intensified the uncertain doubt which was admitted.

Certainly there has been an interregnum. Thirteen years of adequately responsible cabinet government under the Weimar Constitution gave way to presidential government. When an appeal to the people did not result in a Reichstag which could give a majority to a cabinet, the president kept in office a cabinet responsible only to him. When the Reichstag called for the resignation of the cabinet the president decided on a second appeal to the people and meanwhile the government proceeded on something like the mandate given by the Roman senate to the consuls "to see that the Republic took no harm." It would probably be more accurate to write "Reich" instead of "Republic".

In the excogitation and application of this policy there were many political nuances and maneuverings. There was talk of a revision of the Constitution so that the executive could function on the American astronomical plan—for a fixed term independently of legislative favor. If there was no genuine desire for, there was at least a discussion of, the possible reshaping of the von Papen cabinet so that it might receive Reichstag support while continuing to be President von Hindenburg's preferred government. There were negotiations for a cabinet which might be formed by a mock marriage of Centrists and Hitlerites but the president forbade the banns. In the end

[1] The first part of this article was published in the Political Science Quarterly for September 1932.

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the Reichstag was again dissolved and for the fourth time within a calendar year the whole German electorate was appealed to—twice in the choice of a president and twice in the choice of a Reichstag. The results, so far as the relationship of the president and the cabinet are concerned, are in doubt. The interregnum may be continued. It may be succeeded by another period of moderately responsible parliamentary government or a presidential cabinet may continue to be imposed upon an objecting Reichstag. Whether the country's objections will be equally vehement is uncertain.

Through this *annus mirabilis* of German politics one article of the Weimar Constitution has been of vital importance. Article 48 is one of the few provisions of fundamental charters which is known the world over by number, rather than by content. It is therefore a fitting title for a discussion of the emergency decrees which, for the last year, have placed Germany under an economic dictatorship more rigorous than the economic dictatorship of the war. But this use of Article 48 is nothing new. It has been resorted to throughout the whole period of the Weimar Constitution, and the von Papen cabinet has relied upon it no more than did cabinets which were responsible to the legislature. During the war there were few discussions as to the legality or constitutionality of the measures resorted to as ancillary to military power. *Inter arma silent leges.* Now, however, the decrees like eagles in dovecotes flutter the jurists. The courts are vainly appealed to. Before the theories and refinements of the lawyers and the judicial decisions are examined it is desirable to set down in bare outline what Article 48 is and the principal activities under it.

The text of Article 48 is as follows:

> If a state fails to carry out the duties imposed upon it by the national constitution or national laws, the President of the Reich may compel performance with the aid of armed force.
>
> If public safety and order be seriously disturbed or threatened within the German Reich, the President of the Reich may take the necessary measures to restore public safety and order; if necessary, with the aid of armed force. For this purpose he may temporarily suspend in whole or in part the fundamental rights enumerated in

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Articles 114 [personal liberty], 115 [inviolability of dwellings], 117 [secrecy of postal, telegraphic and telephonic communication], 118 [freedom of speech and of the press], 123 [right of peaceful assembly], 124 [freedom of association], and 153 [guarantees of property rights].

The President of the Reich must immediately communicate to the Reichstag all measures taken by virtue of Paragraph 1 or Paragraph 2 of this Article. On demand of the Reichstag these measures must be abrogated.

If there be danger in delay, the state ministry may, for its own territory, take such temporary measures as are indicated in Paragraph 2. On demand by the President of the Reich or by the Reichstag such measures shall be abrogated.

Detailed regulations shall be prescribed by a national law.[1]

From the point of view of method an emergency régime under Article 48 means the temporary suspension of the provisions of the Weimar Constitution (Articles 68-74) which prescribe how federal laws shall be enacted. From the point of view of content the ordinances under Article 48 bring into

[1] Translation from McBain and Rogers, *The New Constitutions of Europe* (Garden City, 1923), pp. 185-186. The national law referred to in the last paragraph has not been enacted.

The provisions concerning the dictatorship are contained exclusively in Article 48. This article contains law which is immediately applicable despite the fact that detailed regulation by an executory law is to follow. *Cf. RGStr.*, vol. 55, p. 115, and Delbrück's argument in his report to the National Assembly on Article 48 to the same effect, quoted *ibid.*, pp. 115-116. Grau, *Die Diktaturgewalt des Reichspräsidenten und der Landesregierungen auf Grund des Artikels 48 der Reichsverfassung* (Berlin, 1922), p. 31, implies that the law reserved in paragraph 5 cannot limit the president's right; *contra:* Schmitt and Jacobi in *Veröffentlichungen der deutschen Staatsrechtslehrer,* vol. I, pp. 104, 136. All imperial laws concerning the extraordinary powers have been abrogated, as have the earlier provisions of the constitutions of the Länder, Grau, *op. cit.*, p. 28. The Länder are incompetent to issue new provisions concerning the dictatorship because of the operation of the principle "Reichsrecht bricht Landesrecht" and because the regulation of the matter in the Constitution itself by implication deprives the Länder of competence to legislate upon the subject. See *RGStr.*, vol. 56, p. 189; see also, *ibid.*, vol. 55, p. 119.

Early drafts of the Weimar Constitution, following the imperial plan, dealt separately with execution against the Länder and with president's emergency decrees, but on the third reading the provisions were drawn together in Article 48. See Gerhard Anschütz, *Die Verfassung des Deutschen Reichs* (Berlin, 1929), pp. 240-241.

LICENSED TO UNZ.ORG
ELECTRONIC REPRODUCTION PROHIBITED

sharp focus two fundamental factors of the Constitution: (1) the socialism potentially inherent in Section 5 of the Constitution, and particularly the dictum of Article 153 that "property imposes obligations"; and (2) the functional unitarism which underlies the structural federalism. It is worthy of note, however, that before the emergency decree under which the government of the Reich took over the government of Prussia (No. 222) [1] no ordinance was avowedly based on paragraph 1 of Article 48.

With the exception of the emergency ordinances that deal with the preservation of domestic peace, the executive has acted not because of a direct threat to "public safety and order" but to meet economic situations which were fraught with danger to the state. To the critics who charged that the fourth emergency ordinance, particularly in its impairment or abolition of contractual obligations, was creating a lawless state (*rechtlosen Staat*), Finance Minister Dietrich replied as follows: "We have modified legal relations in only a few points, as has always happened in great crises. These modifications are now necessary for we are living in an economic state of war which we must overcome if we do not want to go under." [2] As a matter of fact, however, if the points are not numerous, the action taken is drastic, and it is in this respect that the régime which is set up under Article 48 differs most strikingly from the economic effects of the state of siege which was familiar to Germany under the imperial Constitution and the Constitution of Prussia.

Article 68 of the imperial Constitution empowered the emperor, if public security within the federal territory was threatened, to declare martial law in any part of the empire. The consequences of such a declaration—until the enactment of a federal statute—were to be regulated by the Prussian law of 1851.[3] The federal statute was never enacted and the Prussian law remained as federal law to the fall of the empire.

[1] See below, p. 593.

[2] Quoted in Elster's introduction, *Die Vierte Notverordnung* (Berlin, 1932), pp. xiv-xv.

[3] *Belagerungszustandsgesetz* (B. Z. G.) of June 4, 1851. *Preuss. Gesetz Sammlung*, p. 451.

LICENSED TO UNZ.ORG
ELECTRONIC REPRODUCTION PROHIBITED

The most obvious point of difference between the old and the new constitutional provisions is that Article 68 made the declaration of a state of war (*Kriegszustand*) a formal prerequisite to any further extraordinary measures. Indeed it was only by such a declaration that the extraordinary measures became possible. Article 16 of the Prussian law of 1851 permitted an extraordinary régime without such a declaration (the so-called "minor state of siege"). But this section was not imported into federal jurisprudence. Section 17 of the Prussian law of 1851, which established the responsibility to the Chambers of the Executive for declarations of a major state of siege (the term *Belagerungszustand*, used interchangeably with *Kriegszustand* in the law of the empire) and for emergency measures under Section 16, also did not become part of the federal law. Consequently the Kaiser was responsible to no one for his declaration of a state of war. The responsibility of the military commander for measures taken in pursuance of his extraordinary powers ran, not to the legislature, but to the Kaiser. These powers were in some respects as wide as those possessed by the president of the Reich under Article 48, paragraph 2. In other respects they were much more limited. Thus under section 9 of the Prussian law the military commander could issue prohibitions and commands of a general and individual nature in every domain of the state's life, subject only to the condition that they be issued in the interest of public security. The penalties for violation, on the other hand, unlike the situation under Article 48, were fixed by the statute itself and could not be varied. The extraordinary measures issued under Article 68 were effected, not in the Kaiser's capacity as head of the state, but as commander-in-chief of the army. A declaration of a state of war under the imperial Constitution, as indeed in most of the constitutional and statutory provisions of the German states, involved the immediate passage of the executive power from the civil to the military authority. The former was subordinated to the latter for the duration of the declaration.[1]

[1] For France, see Joseph Carret, *L'Organisation de l'état de siège politique* (Paris, 1916).

LICENSED TO UNZ.ORG
ELECTRONIC REPRODUCTION PROHIBITED

A further significant difference between the old emergency measures under Article 16 of the Prussian law and the new measures under Article 48 is that the former emergency legislation could be issued only while the Chambers were not in session. It was valid only for that period and had to be submitted to the Chambers for approval. In some of the constitutions of the German states the immediate summoning of the Landtag was required. If approval was not given the emergency measures lapsed.[1] Although Article 48 requires that the president shall communicate his measures to the Reichstag, formal approval is not necessary. Nor is the president permitted to issue decrees only when the Reichstag is not in session. Under Article 48 there is only one method of revocation, namely by the president, either of his own volition or at the request of the Reichstag.[2]

[1] For the position of Parliament in Great Britain when the Crown declares that a state of emergency exists see Willoughby and Rogers, *An Introduction to the Problem of Government* (New York, 1922), pp. 97 *et seq.*; Sir Edward Trout, *The Home Office* (London, 1925), p. 246.

[2] Although there have been numerous proposals for the abrogation of the president's ordinances under Article 48 the Reichstag has made such a request only twice—in 1921 and again in 1930.

On December 16, 1921 the Reichstag asked the president to abrogate the ordinance which had been issued upon the occasion of Erzberger's assassination, September 28, 1921 [59]. The revocation followed on December 23 [62]. See *Sten. Ber.*, Session of December 16, 1921, pp. 5266 *et seq.*, cited by Poetzsch, "Vom Staatsleben unter der Weimarer Verfassung", *Jahrbuch des Öffentlichen Rechts*, vol. XIII, pp. 154 *et seq.*, where some of the proposals are referred to.

The other request for abrogation was made on July 18, 1930 and required the abrogation of the two decrees of July 16, 1930 [146 and 147]. The abrogation was effected the day of the request [148] and was accompanied by the dissolution of the Reichstag. The abrogated decrees were then reissued verbatim in an ordinance of July 26, 1930 [150] which covered other subjects as well. The legality of the ordinance of July 26 was disputed before the Reichsgericht which held—*RGStr.*, vol. 65, p. 364, October 6, 1931—that the reissuance of the abrogated decrees was proper.

Thus in 1921 the president granted the Reichstag's request. In 1930 he granted the request, dissolved the Reichstag, and reissued the decrees. In 1932, knowing that the Reichstag would make the request, he issued a decree of dissolution before action could be taken. The president's movements have become so accelerated that one wonders what the next will be.

The order of the president of the Reich for the dissolution of the Reichs-

LICENSED TO UNZ.ORG
ELECTRONIC REPRODUCTION PROHIBITED

Paragraph 1 of Article 48 harks back to Article 19 of the imperial Constitution which provided for federal execution against the states. The important difference is that Article 19 required the assent of the Bundesrat to the measures proposed. The president of the Reich is not so limited under Article 48.[1] It should be noted, however, that regulations executing national laws—and therefore emergency decrees under Article 48—go to the Reichsrat for approval when the execution rests with the authorities of the states.[2]

Resort to Article 48 began while the National Assembly was sitting. Seven ordinances were issued before the first Reichstag came into being. All these ordinances were on questions of public order. It was not until the autumn of 1922, when currency difficulties became acute, that Article 48 was resorted to on the theory that public order and safety could be economic in character. From then on economic ordinances predominated. The frequency and nature of their use are registered on what has been called "the emergency barometer" of German public life: from 1920 to 1925 because of the Ruhr invasion, the separatist movements, the Kapp and Hitler putsches; today because of the economic crisis.[3] Down

tag, September 12, 1932, *RGBl.*, vol. I, p. 441, read as follows:

"By virtue of Article 25 of the Constitution of the Reich I dissolve the Reichstag because of the danger that the Reichstag may request the abrogation of my emergency ordinance of September 4 of this year [229].

"Berlin, the 12th of September 1932.

"The President of the Reich
von Hindenburg
"The Chancellor of the Reich
von Papen
"The Minister of Interior of the Reich
Freiherr von Gayl."

[1] A comprehensive survey of the old law is Hans Pürschel, *Belagerungszustand* (Berlin, 1916). For a comparison of the old administrative ordinances formerly issued by the military commanders under the imperial Constitution and the ordinances issued by the president under Article 48 see *RGStr.*, vol. 55, pp. 121 *et seq.*

[2] Art. 77 of the Constitution. These relationships will be discussed later.

[3] Goldschmidt, "Die dem Reichspräsidenten und den Landesregierungen auf Grund der Diktaturgewalt des Artikel 48 RV. zustehenden Möglichkeiten", *Annalen des Deutschen Reichs*, 1931, p. 261.

LICENSED TO UNZ.ORG
ELECTRONIC REPRODUCTION PROHIBITED

to September 1932, 233 ordinances were issued. The list follows.[1]

1. October 20, 1919. No. 1430. National Assembly. Emergency situation in the districts of Kreis Schleusingen, Landkreis Ohrdruf and Zella-Mehlis.

2. October 30, 1919. No. 1437. National Assembly. Emergency situation in the district of Kreis Siegen.

3. November 11, 1919. No. 1442. National Assembly. Revocation of 1 and 2.

4. November 14, 1919. No. 1881. National Assembly. Restoration of public security and order in parts of the district of Labiau. Replaced by 9.

5. November 21, 1919. No. 1536. National Assembly. Emergency situation in the district of Bitterfeld. Revoked December 12, 1919.

6. November 26, 1919. No. 1658. National Assembly. Restoration of public security and order in the district of Gummersbach.

7. January 8, 1920. No. 1900. National Assembly. Revocation of 6.

8. January 11, 1920. *RGBl.*, p. 41. Restoration of public security and order in the government districts of Düsseldorf, Arnsberg, Münster and Minden. Amended by 9, 21, 24, 25, 28. Replaced by 29.

9. January 13, 1920. No. 2131. National Assembly. Further measures for restoration of public order and security in localities mentioned in 8. See 29.

10. January 13, 1920. *RGBl.*, p. 207. Restoration of public security and order in the Reich with the exception of Bavaria, Saxony, Württemberg, Baden and enclaves. Amended by 12, 13, 14, 17-20, and replaced by 26.

11. January 29, 1920. *RGBl.*, p. 195. Prohibition for Saxony also of the cessation of essential industries forbidden by § 6 of 10. See 27.

12. March 2, 1920. *RGBl.*, p. 357. Amendment of 10.

13. March 19, 1920. *RGBl.*, p. 467. Aggravated emergency situation in the district of the first Reichswehr command. See 20.

14. March 22, 1920. No. 2530. National Assembly. Dissolution of extraordinary courts for Greater Berlin.

15. March 22, 1920. *RGBl.*, p. 343. Public security and order in Thuringian Länder and enclaves. See 22.

16. March 25, 1920. *RGBl.*, p. 470. Public security and order in the territory of the 11th Reichswehr Brigade. Replaced by 26.

17. March 25, 1920. *RGBl.*, pp. 473, 517. Dissolution of extraordinary courts.

18. March 26, 1920. No. 2531. National Assembly. Revocation of measures taken in East Prussia.

19. March 26, 1920. No. 2532. National Assembly. Revocation of the measures taken for Greater Berlin and Brandenburg.

20. March 27, 1920. *RGBl.*, p. 473. Revocation of 13.

21. April 3, 1920. *RGBl.*, p. 557. Dissolution of extraordinary courts in the governmental districts of Düsseldorf, Arnsberg and Münster. See 28.

22. April 10, 1920. *RGBl.*, p. 476. Revocation of 15.

23. April 10, 1920. *RGBl.*, p. 477. Public security and order in Sachs-

[1] The ordinances down to 1929 have been listed by Poetzsch-Heffter "Vom Staatsleben unter der Weimarer Verfassung", *Jahrbuch des Öffentlichen Rechts*, vol. XIII (1925), pp. 141 *et seq.*, and vol. XVII (1929), p. 99. The enumeration given here has been checked with the *Reichsgesetzblatt* and the titles of the economic ordinances have in some cases been amplified. The list from 1929 on is from the *Reichsgesetzblatt*. The economic ordinances are starred.

LICENSED TO UNZ.ORG
ELECTRONIC REPRODUCTION PROHIBITED

Gotha. Transfer of executive power to a governmental commissioner appointed by the Reich. See 38.

24. April 10, 1920. No. 2797. National Assembly. Further measures for the restoration of public security and order in the government districts of Düsseldorf, Arnsberg, Münster. Proceedings before extraordinary war tribunals. Replaced by 29.

25. April 10, 1920. *RGBl.*, p. 558. Surrender of all firearms in the districts of Düsseldorf, Arnsberg and Münster. Amended by 35. Revoked by 60.

26. April 11, 1920. *RGBl.*, p. 479. Revision of all regulations previously issued relating to public security and order with the exception of regulations for Düsseldorf, Arnsberg and Münster. See 31, 33, 34, 41.

27. April 13, 1920. *RGBl.*, p. 1334. Revocation of state of siege in Saxony.

28. May 3, 1920. No. 2950. National Assembly. Amendment of 21.

29. May 5, 1920. *RGBl.*, p. 887. Revision of regulations for restoration of public order and security in the governmental districts of Düsseldorf, Arnsberg and Münster. See 30, 33.

29. May 5, 1920. *RGBl.*, p. 887. Revision of regulations for restoration of public order and security in the governmental districts of Düsseldorf, Arnsberg and Münster. See 30, 33.

30. May 19, 1920. *RGBl.*, p. 985. Amendment of 29. See 33.

31. May 28, 1920. *RGBl.*, p. 1094. Suspension of 26 except for Silesia, Westphalia and the province of Saxony.

32. May 30, 1920. *RGBl.*, p. 1147. Penalties for inciting Reichswehr to rebellion. Replaced by 47. See 61.

33. June 12, 1920. *RGBl.*, p. 1198. Suspension of regulations for restoration of public security and order in Westphalia and the governmental district of Düsseldorf.

34. June 14, 1920. *RGBl.*, p. 1199. Suspension of regulations for restoration of public security and order in Silesia.

35. June 15, 1920. *RGBl.*, p. 1211. Amendment of 25. See 60.

36. June 27, 1920. *RGBl.*, p. 1333. Public security and order in Hamburg. See 40.

37. June 27, 1920. *RGBl.*, p. 1334. Public security and order in the district of Schleusinger (Province of Saxony). See 41.

38. July 6, 1920. *RGBl.*, p. 1453. Revocation of 23.

39. July 23, 1920. *RGBl.*, p. 1477. Public security and order in 1st Wehrkreis. See 58.

40. August 5, 1920. *RGBl.*, p. 1567. Revocation of 36.

41. August 31, 1920. *RGBl.*, p. 1643. Revocation of regulations for restoration of public security and order in the Province of Saxony.

42. September 6, 1920. *RGBl.*, p. 1659. Public security and order in the municipality of Breslau. Revoked Sept. 20, 1920.

43. November 10, 1920. *RGBl.*, p. 1865. Shutting down of works which supply the population with gas, water and electricity.

1921.

44. March 24. *RGBl.*, p. 253. Public security and order in the province of Saxony. See 53 and 56.

45. March 24. *RGBl.*, p. 254. Public security and order in Greater Hamburg. See 51.

46. March 26. *RGBl.*, p. 343. Extension of 45 to entire territory of Hamburg (except Ritzebüttel) and to the Prussian districts of Lauenburg and Stormarn. See 51.

47. March 29. *RGBl.*, p. 371. Establishment of extraordinary tribunals. Amended by 50.

LICENSED TO UNZ.ORG
ELECTRONIC REPRODUCTION PROHIBITED

48. March 29. *RGBl.*, p. 456. Public security and order in governmental districts of Düsseldorf, Arnsberg and Münster.

49. May 5. *RGBl.*, p. 502. Revocation of 48.

50. May 14. *RGBl.*, p. 689. Amendment of 47.

51. May 24. *RGBl.*, p. 711. Prohibition against military societies. See 32.

52. June 3. *RGBl.*, p. 734. Revocation of 45 and 46 for Hamburg.

53. June 21. *RGBl.*, p. 769. Revocation of emergency situation for parts of the Province of Saxony. See 44.

54. August 29. *RGBl.*, p. 1239. Restrictions on freedom of movement, assembly and speech granted by Constitution. Prohibitions against periodical publications. Amended by 55. Replaced by 59.

55. August 30. *RGBl.*, p. 1249. Amendment of 54.

56. August 30. *RGBl.*, p. 1250. Revocation of emergency situation for rest of Province of Saxony.

57. August 30. *RGBl.*, pp. 1251, 1280. Prohibition against wearing military uniforms.

58. August 30. *RGBl.*, p. 1256. Revocation of 39.

59. September 28. *RGBl.*, p. 1271. Revision of 54 and 55. See 62.

60. October 10. *RGBl.*, p. 1287. Revocation of 25 and 35.

61. November 5. *RGBl.*, p. 1349. Termination of functions of extraordinary courts and officials delegated to hear complaints under 32.

62. December 23. *RGBl.*, p. 1664. Suspension of 59.

1922.

63. February 1. *RGBl.*, I, p. 187. Prohibition against resignations of railroad officials. See 64.

64. February 9. *RGBl.*, I, p. 205. Revocation of 63.

65. June 26. *RGBl.*, I, p. 521. Decree for the protection of the Republic. Limitations on freedom of association and assembly. Penalties. Creation of a Staatsgerichthof for the protection of the Republic. Amended by 67, revoked by 69.

66. June 26. *RGBl.*, I, p. 523. Prohibition against certain assemblies. See 117.

67. June 29. *RGBl.*, I, p. 532. Second decree for the protection of the Republic. See 69.

68. July 4. *RGBl.*, I, p. 543. Public security and order in Lower Silesia and Upper Silesia. Suspension of article 114 of the Constitution of the Reich. See 117.

69. July 23. *RGBl.*, I, pp. 630, 722. Revocation of 65 and 67.

70* October 12. *RGBl.*, I, pp. 795, 847. Payment in foreign currency etc. may not be demanded or taken in domestic business. See 73.

1923

71. March 3. *RGBl.*, I, p. 159. Penalties against espionage. Amended by 81. Revoked by 87.

72. April 17. *RGBl.*, I, p. 251. Temporary suspension of article 114 of the Constitution because of illegal occupation of German soil. See 87.

73* May 8. *RGBl.*, I, p. 279. Revocation of 70 because of issuance of the ordinance of the government of May 8, 1923 (*RGBl.*, I, p. 275) under article VI, section 1, no. 3, of the Emergency Law of February 24, 1923 (*RGBl.*, I, p. 147) relative to speculation in foreign valuta.

74. May 22. *RGBl.*, I, p. 299. Change in the state law of Oldenburg.

75* June 14. *RGBl.*, I, p. 381. Temporary shelter of German nationals deported from occupied territories. Amended by 125.

76* June 22. *RGBl.*, I, p. 401. Dealings in foreign currencies against

LICENSED TO UNZ.ORG
ELECTRONIC REPRODUCTION PROHIBITED

Reichsmarks at a fixed rate. Permits such dealings at the rates and for the currencies officially quoted. Amended by 77. Revoked by 78.

77* July 3. *RGBl.*, I, p. 511. Dealing in futures in foreign exchange against Reichsmarks forbidden. Such transactions are void and the parties are criminally liable. Extends 76 to dollar bonds of the German Gold Loan of 1923.

78* August 4. *RGBl.*, I, p. 760. Revocation of 76 and 77.

79* August 9. *RGBl.*, I, p. 765. Prohibits sale of Reichsmarks abroad. See 131.

80. August 10. *RGBl.*, I, p. 768. Limitation of article 118 of the Constitution throughout the Reich. See 117.

81. August 11. *RGBl.*, I, p. 795. Amendment of 71. See 87.

82* August 25. *RGBl.*, I, p. 833. Requires delivery of stated number of gold Reichsmarks or equivalent in foreign gold credits by those liable to make contributions under § 5 of the law of June 23, 1923. (*RGBl.*, I, p. 410) relating to the financing of the supply of cheap bread. Amended by 83 and 110.

83* September 6. *RGBl.*, I, p. 869. Amendment of 82.

84* September 7. *RGBl.*, I, p. 865. Seizure of foreign valuta. See 130.

85. September 15. *RGBl.*, I, p. 879. Incitement to tax strikes, etc.

86. September 26. *RGBl.*, I, p. 905. Declaration of emergency situation throughout the Reich. Amended by 88, 98, 112. Revoked by 116.

87. September 27. *RGBl.*, I, p. 911. Revocation of ordinances issued by the government upon the occasion of the invasion of the Ruhr under the emergency laws of March 16 and March 29, 1923 (*RGBl.*, I, pp. 188 and 234) and of 71, 72 and 81.

88. October 10. *RGBl.*, I, p. 948. Amendment of 86.

89* October 11. *RGBl.*, I, p. 939. Revaluation of tax payments in terms of gold. Simplification of tax procedure. See 91.

90* October 13. *RGBl.*, I, p. 945. Coal industry (prices, revocation of the coal tax law of March 20, 1923 [*RGBl.*, I, p. 193]). See 91.

91* and 92* October 18. *RGBl.*, I, p. 979. Alteration of the legal bases of 89, 90.

93. October 29. *RGBl.*, I, p. 995. Public security and order in the Free State of Saxony (authorization to chancellor to remove members of government of that state from office, etc.). See 94.

94. November 1. *RGBl.*, I, p. 1039. Revocation of 93.

95* November 5. *RGBl.*, I, p. 1082. Temporary suspension of obligations under contracts calling for payments of marks at foreign quotations when the payee refuses to take payment at the Berlin rate.

96* November 5. *RGBl.*, I, p. 1083. Liquidation of property by means of loans and the issuance of treasury bonds.

97* November 7. *RGBl.*, I, p. 1081. Obligation to accept Reichsmarks in domestic business. See 131.

98. November 8. *RGBl.*, I, p. 1084. Supreme command of the army and use of the executive power. See 116.

99* November 8. *RGBl.*, I, p. 1086. Minting of token money.

100* November 15. *RGBl.*, II, p. 411. Postponement of the payments for the reimbursement of the reparations tax collected from German exporters by the British government under the Reparation (Recovery) Act of March 24, 1921.

101* November 16. *RGBl.*, I, p. 1099. Extension of the legislation relating to bills of exchange to the Rentenmark, gold loans and fixed value emergency money. Amendment of 79.

102* November 21. *RGBl.*, I, p. 1119. Safekeeping of foreign valuta.

103* November 23. *RGBl.*, I, p. 1132. Adaptation of the postal check service to the Rentenmark.

LICENSED TO UNZ.ORG
ELECTRONIC REPRODUCTION PROHIBITED

104* November 27. *RGBl.*, I, p. 1165. Amendment of the law relating to the fees of consular officials.

105* November 29. *RGBl.*, I, p. 1157. Amendment of ordinance of October 30, 1923 (*RGBl.*, I, p. 1051) issued under the enabling act of October 13, 1923 (*RGBl.*, I, p. 943) concerning sick benefits from sick funds.

106* December 6. *RGBl.*, II, p. 435. Suspension of reparations payments in kind.

107* December 7. *RGBl.*, I, p. 1177. Emergency taxes. See *RGBl.*, 1923, I, p. 1228.

108* December 8. *RGBl.*, I, p. 1193. Amendment of the laws of March 2, 1919 (*RGBl.*, pp. 261 *et seq.*) and March 27, 1920 (*RGBl.*, pp. 353 *et seq.*) relating to indemnification for contributions made to the German army and to the forces of the enemy in occupied territory.

109. December 12. *RGBl.*, I, p. 1197. Adjudication of cases of high treason and espionage by the state courts of appeal. See 113.

110* December 14. *RGBl.*, I, p. 1194. Delivery of six per cent treasury certificates, payable December 1, 1932, in return for the delivery of foreign credits payable after November 25, 1923, under 82.

111. December 17. *RGBl.*, I, p. 1231. Summary judgment in criminal matters. See 114.

112. December 23. *RGBl.*, 1924, I, pp. 8, 52. Amendment of 86. See 116.

1924

113. January 4. *RGBl.*, I, p. 23. Revocation of 109.

114. January 13. *RGBl.*, I, p. 29. Revocation of 111 except §§ 7, 2 and 9.

115. February 13. *RGBl.*, I, p. 117. Transfer of the penal proceedings instituted after the disturbances in Hamburg in October 1923 to ordinary courts.

116. February 28. *RGBl.*, I, p. 152. Revocation of the military emergency situation and defensive measures against movements hostile to the state.

117. February 29. *RGBl.*, I, p. 157. Revocation of 66, 68, 80.

118* March 3. *RGBl.*, II, p. 62. Resumption of payment in reimbursement of the reparations tax levied by the British government.

119* March 8. *RGBl.*, I, pp. 273, 380. Control of wireless communication. Amended by 126.

120* April 3. *RGBl.*, I, p. 397. Increase in foreign travel fees. See 123.

121. April 25. *RGBl.*, I, p. 429. Amendment of 116. See 129.

122. June 17. *RGBl.*, I, p. 655. Further amendment of 116. See 129.

123* June 18. *RGBl.*, I, p. 648. Revocation of 120.

124* July 4. *RBesBl.*, p. 201. Salary payments to officials.

125* July 8. *RGBl.*, I, p. 664. Temporary shelter of Germans deported from occupied territory.

126* July 24. *RGBl.*, I, p. 670. Amendment of 119.

127* September 14. *RGBl.*, I, p. 707. Lowering of the general sales tax by 2 per cent and lowering of specific tax rates of the tax law upon capital transactions of April 8, 1922 (*RGBl.*, I, p. 354).

128* October 21. *RGBl.*, I, p. 721. Second ordinance amending the law relating to indemnification for contributions paid to the enemy army in occupied territory. See 108.

129. October 25. *RGBl.*, I, p. 721. Revocation of 116, 121, 122.

130* November 1. *RGBl.*, I, p. 726. Federal supervision of the procuring of foreign credit and floating of loans abroad by the Länder, communes and communal unions. The national minister of finance—if the Reichsrat concurs—may disapprove and forbid such transactions.

131* October 31. *RGBl.*, p. 729. Revocation of 79 and 84 but see 95, 97, 101.

LICENSED TO UNZ.ORG
ELECTRONIC REPRODUCTION PROHIBITED

132* November 10. *RGBl.*, I, p. 737. Economically necessary tax reductions—lowers income and corporation taxes and sales tax.

133* December 4. *RGBl.*, I, p. 765. Continuation of the temporary valorization regulations issued under the enabling act of December 8, 1923 (*RGBl.*, I, p. 1179).

134* December 14. *RGBl.*, II, p. 431. Ordinance concerning the agreement of July 12, 1924, supplementing the German-Austrian economic agreement of September 1, 1920.

135* December 29. *RGBl.*, I, p. 967. Continuance in force of the regulations of the laws lapsing December 31 relating to capital export tax and wine tax. Continued by statute of April 16, 1925 (*RGBl.*, I, p. 43) and revoked by statute of June 26, 1925 (*RGBl.*, I, p. 91).

1925

136* January 29. *RGBl.*, I, p. 7. Same subject as 130. Revoked February 28, 1925.

137. August 26. *RGBl.*, I, p. 320. Revocation of 57.

1926.

138. January 4. *RGBl.*, I, p. 5. Revocation of 74.

139. October 26. *RGBl.*, I, p. 481. Revocation of 51.

1927.

140* January 8. *RGBl.*, I, p. 40. Revocation of 103.

141* April 5. *RGBl.*, I, p. 90. Revocation of 75 and 125.

142* September 21. *RGBl.*, I, p. 311. Revocation of 133.

143* November 7. *RGBl.*, I, p. 327. Revocation of 131.

144* December 28. *RGBl.*, I, p. 513. Revocation of 119 and 126.

1928.

145* August 2. *RGBl.*, I, p. 291. Revocation of 47 except §§ 9, 19 par. 2, 20 par. 1, 21 par. 3; revocation of 50, 96, 105, 132.

1929.

No use was made of the emergency ordinance in this year.

1930.

146* July 16. *RGBl.*, I, p. 207. Revenue to cover the national budget for 1930. Revoked by 148.

147* July 16. *RGBl.*, I, p. 212. Authorization to the communes to levy an excise tax. Revoked by 148.

148* July 18. *RGBl.*, I, p. 223. Revocation of 146 and 147 in accordance with the request of the Reichstag of July 18.

149. July 25. *RGBl.*, I, p. 352. Unlawful use of weapons.

150* July 26. *RGBl.*, I, p. 311. Relief of financial, industrial and social distress.

151* December 1. *RGBl.*, I, p. 517. So-called First Ordinance of the president of the Reich for the safeguarding of industry and finance.

1931.

152* January 9. *RGBl.*, I, p. 1. Settlement of disputes between employers and workers by arbitration. Expires July 31, 1931.

153* March 6. *RGBl.*, I, p. 32. Revocation of 82, 83, 99, 106, 115, 118, 127.

154. March 28. *RGBl.*, I, p. 78. Revocation of 149.

155. March 28. *RGBl.*, I, p. 79. Repression of political excesses. Suspends fundamental rights mentioned in article 48, paragraph 2.

LICENSED TO UNZ.ORG
ELECTRONIC REPRODUCTION PROHIBITED

156* June 5. *RGBl.*, I, p. 279. Second ordinance for safeguarding of industry and finance. Amended by 181 and 192.

157* July 8. *RGBl.*, I, p. 351. "Upon the basis of article 48, paragraph 2 of the Constitution the following is ordered at the suggestion of the leaders of German industrial life:"

1. The Government is empowered, by legal ordinances based upon the provisions of the Aufbringungsgesetz of August 30, 1924 (*RGBl.*, II, p. 269—the law regulating the financing of the Dawes Plan by a charge on German industries), to impose proportionately upon the entrepreneurs chargeable under that law and the value of whose enterprise exceeds five million Reichsmarks a liability up to the total amount of 500 million marks in order to make up possible losses in the credit operations which the German Gold Discount Bank is carrying out in the interest of the maintenance of German credit abroad....

158* July 13. *RGBl.*, I, p. 359. Darmstädter und National Bank. Governmental guarantee of the bank's obligations.

159* July 13. *RGBl.*, I, p. 361. Authorizes government to declare bank holidays.

160* July 15. *RGBl*, p. 365. Authorizes government to regulate the resumption of payments after bank holidays, dealings in bills, and public quotations of rates of exchange.

161. July 17. *RGBl.*, I, p. 371. Second ordinance relating to suppression of political disturbances.

162* July 18. *RGBl.*, I, p. 373. Flight of capital and tax evasion.

163* July 18. *RGBl.*, I, p. 376. Passport fee of 100 marks from German nationals desiring to travel abroad.

164* July 18. *RGBl.*, I, p. 379. Amendment of the Coinage Law of August 30, 1924, § 8, paragraph 1 (*RGBl.*, II, p. 254).

165* July 18. *RGBl.*, I, p. 381. Authorizes the government to regulate the manner in which payments of sums due for present or past services of a public or private nature shall be made; also to regulate the manner of payment to the Länder of their shares of taxes collected for the benefit of the Reich and them....

166* July 20. *RGBl.*, I, p. 385. Penalty assessments for tax arrears. Five per cent for all taxes named in § 2, per half-month. Two per cent for all others.

167* July 22. *RGBl.*, I, p. 391. Gold cover of the notes of private note banks. They may decrease their gold cover at the same rate as the Reichsbank and must increase it at the same rate.

168* July 25. *RGBl.*, I, p. 395. Authorizes the government to regulate the liquidation of stock exchange transactions impeded by the close of the exchange to the rules of which they are subject.

169* July 27. *RGBl.*, I, p. 403. Authorizes the government to require report of obligations payable abroad.

170* July 27. *RGBl.*, I, p. 404. Authorizes the government to effect the participation of the Reich in private business undertakings.

171* August 1. *RGBl.*, I, p. 419. Amendment of § 240, paragraph 2 of the Commercial Code.

172* August 1. *RGBl.*, I, p. 421. Establishes an office for the administration of dealings in bills of exchange. Lays down rules. Does not obtain for Reichsbank and German Gold Discount Bank or for agreements concluded with the assent and under the supervision of the Reichsbank. Means of foreign payment can be obtained only from or through the Reichsbank and then only for payment of taxes and regular amortization of long term loans. Reichsbank may delegate right to issue foreign credits to other

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ELECTRONIC REPRODUCTION PROHIBITED

banks in same classes of cases. For foreign credits for other purposes application must be made to the office for the administration of dealings in bills of exchange. Dealings in foreign bills etc. forbidden. Transactions in violation of these provisions are void. Penalties up to ten years penal servitude. Administrative bodies are finance bureaus of the Länder. Policies determined by finance minister etc.

173* August 6. *RGBl.*, I, p. 433. Extension of the period in which limited liability companies may begin proceedings in bankruptcy or judicial composition. Applies also to industrial and agricultural coöperative societies. Amends statute of March 25, 1930 (*RGBl.*, I, p. 93), § 64, paragraph 1, sentence 1, and § 99, paragraph 1, sentence 1.

174* August 6. *RGBl.*, I, p. 433. Facilitation of harvest. Permits and regulates mixing of grain in bins of German Grain Commerce Society.

175. August 10. *RGBl.*, I, p. 435. Amendment of 161.

175a. August 10. *RGBl.*, I, p. 436. Political disturbances.

176* August 23. *RGBl*, I, p. 449. Taxation of hitherto untaxed wealth; tax amnesty. Fifty per cent on the income of family endowments where the corpus is held in a foreign country and income paid to persons taxable in Germany.

177* August 24. *RGBl.*, I, p. 453. Safeguarding budgets of Länder and communes. (1) Governments of the Länder are empowered to take all measures which are necessary for the balancing of the budgets of the Länder and the communes (or communal unions) by means of emergency ordinances. They may incidentally derogate from the obtaining land law. (2) The governments of the Länder may prescribe in particular that the expenditures on persons [i. e. wages, pensions and insurance] and other expenditures of the Länder and communes (or communal unions) shall be lowered as well as the method of reduction. Obligations in agreements remain unaffected except insofar as expenditures on persons are concerned.

178* September 9. *RGBl.*, I, p. 489. Execution of the financial standstill agreement.

179* September 19. *RGBl.*, I, p. 493. Amendment of the Commercial Code in respect of law affecting corporations; establishment of curatorium and federal commissioner of banking; offer of tax amnesty to delinquents who purchase National Railway bonds in given proportion to the amount of their arrears.

180* September 27. *RGBl.*, I, p. 513. Settlement of labor disputes by arbitration. See 152.

181* October 6. *RGBl.*, I, p. 537. Third ordinance for the safeguarding of industry and finance and the repression of political disturbances. Amended by 191 and 192.

182* October 10. *RGBl.*, I, p. 569. Change in the valuation of mortgages and other claims which call for payment in gold (gold marks).

183* October 17. *RGBl.*, I, p. 581. Extension of the tax amnesty period.

184* October 29. *RGBl.*, I, p. 657. Amendment of the tariff law.

185* November 6. *RGBl.*, I, p. 665. Amendment of the statute of March 31, 1931 (*RGBl.*, I, p. 117) relating to relief for eastern territory.

186* November 10. *RGBl.*, I, p. 667. Extension of the period of payment in revalorization matters.

187* November 17. *RGBl.*, I, p. 675. Safeguarding the harvest, and establishment of "*Entschuldung*" procedure for the deliverance of farmers in the eastern territories from debt. Provides procedure whereby indebted farmer may harvest his crop without fear of molestation—the crop standing as security for his obligation. Measures of execution are stayed during the proceedings under the ordinance. The benefits of the measure

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ELECTRONIC REPRODUCTION PROHIBITED

apply only to those who cannot pay their debts unless they complete the harvesting of their crops. The procedure may be instituted by either the debtor or the creditor. Until the conclusion of the entire operation the debtor cannot sell any of the things which stand as security for his obligation. In paying out claims from the proceeds of the harvest the order of priority is as follows: obligations to the state, cost of farming including support of farmer and his family, then the claims of creditors in order of priority among themselves. The Bank for German Industrial Obligations supplies the farmer with credit for the purchase of supplies. The application of the benefits of the ordinance is to occur only when it appears likely to be successful.

188* November 17. *RGBl.*, I, p. 679. Amendment of 172. Establishes new penalties. Provides summary procedure.

189* November 29. *RGBl.*, I, p. 689. Extension of law of July 15, 1930 (*RGBl.*, I, p. 215) to June 30, 1932.

190* December 1. *RGBl.*, I, p. 689. Authorizes government until meeting of the Reichstag and in case of pressing economic need (1) to alter the import duties, (2) to apply provisionally bilateral commercial agreements with foreign states. Ordinances under (1) are to be submitted to the Reichsrat and revoked at its request. Ordinances under (2) are to be submitted to the Reichstag and revoked at its request.

191* December 8. *RGBl.*, I, p. 699. Fourth ordinance for safeguarding of industry and finance and the preservation of internal peace.

192* December 23. *RGBl.*, I, p. 779. Adaptation of certain laws and ordinances to the altered industrial and financial situation. Affects 151, 150. Amends income tax law of August 10, 1925, assessment law of May 22, 1931 (*RGBl.*, I, p. 222), automotive vehicle tax law of March 16, 1931 (*RGBl.*, I, p. 64), law concerning the spirit monopoly of April 8, 1922 (*RGBl.*, I, p. 405). Amends 156, 191, 190, 181 etc.

1932.

193. January 16. *RGBl.*, I, p. 19. Modification of the prohibition against wearing emblems in 191.

194* January 18. *RGBl.*, I, p. 27. Authorizes the government to raise import duties in case of pressing economic need (against countries not on the gold standard and countries discriminating against German goods).

195* January 22. *RGBl.*, I, p. 31. Second ordinance relating to penalty assessments upon tax arrears. Makes the rate one and one half per cent.

196* January 23. *RGBl.*, I, p. 32. Spring manuring and seed supply.

197* February 6. *RGBl.*, I, p. 59. Agricultural *Entschuldung* in the *Osthilfe* territory. Permits creditors of agriculturists whose claims have been passed upon in *Entschuldung* proceedings to obtain in return for their claims 4½ per cent obligations [*Osthilfe-Entschuldungsbriefe*] of the German Rentenbank, *Osthilfe* Division, which the Bank may issue up to 500 million marks and which share in the security of the Rentenbank law. The Bank for German Industry Obligations, as trustee for the Rentenbank, is constituted a mortgagee of the indebted agricultural property. Three hundred million marks of *Entschuldungsbriefe* are to be paid off in 1935, the rest in 1938. In case of the insolvency of the Rentenbank holders of *Entschuldungsbriefe* have a prior right to the sums realized from the mortgages held by the Industriebank. The Industriebank gets ½ of one per cent and the Rentenbank 1/10 of one per cent of the yearly mortgage payments.

198* February 6. *RGBl.*, I, p. 60. Amendment of 191 in respect of the rents tax (scheme to encourage building).

199* February 19. *RGBl.*, I, p. 71. Amendment of 187, of § 5 of 196.

LICENSED TO UNZ.ORG
ELECTRONIC REPRODUCTION PROHIBITED

200* February 20. *RGBl.*, I, p. 83. Authorizes the government to take steps for the reorganization of banking.

201* February 27. *RGBl.*, I, p. 85. Authorizes the government to adopt the necessary measures to make effective the German Credit Agreement of 1932. See *ibid.*, p. 86 for the regulations issued by the government.[1]

202* March 9. *RGBl.*, I, p. 121. Protection of economy. Covers free gifts, clearance sales, fixed price stores, tariff changes and provisional application of bilateral commercial agreements, amendment of the tariff law.

This ordinance forbids inducing the purchase of goods by offering to throw in another article. It also forbids advertising free gifts and the like in connection with the offer of goods for sale. A civil and criminal liability is created for violation of these provisions. Regulates methods of competition. Fake clearance sales are forbidden. This does not apply to post-season and inventory sales which are normal in the trade or necessary for the orderly development of the business. Questions arising under these provisions are to be determined by administrative officials.

Five and ten cent type stores may not be set up in towns of less than 100,000 inhabitants until April 1, 1934. The use of the description *Einheitsgeschäfte* [five and ten cent type establishments] is regulated.

Part 3, § 3, paragraph 2: "If in fixed price stores goods are sold or offered for sale in units of number, size or weight other than those customary in the trade there must be placed upon the goods or their wrappings near the indication of the price of the goods offered for sale a statement of the price of a unit of number, size or weight of these goods usual in the trade."

203* March 5. *RGBl.*, I, p. 127. Amendment of 192.

204. March 17. *RGBl.*, I, p. 133. Safeguarding internal peace.

205* March 19. *RGBl.*, I, p. 135. Lowers certain taxes.

206* March 29. *RGBl.*, II, p. 97. Administration of the revenue and expenditures of the Reich for the period from April 1, 1932 to June 30, 1932.

207. April 13. *RGBl.*, I, p. 175. Preservation of the authority of the state. All quasi-military organizations of the National Socialist German Workers' Party are forthwith dissolved.

208* April 15. *RGBl.*, I, p. 177. Amendment of 172.

209* April 20. *RGBl.*, I, p. 181. Amendment of the law relating to the spirits monopoly.

210. May 3. *RGBl.*, I, p. 185. Preservation of the authority of the state. Political societies organized or conducting themselves on a quasi-military basis together with their branches must upon request submit their articles of association to the national minister of defense for review. They must also notify him of every contemplated change therein. They must revoke every article which the minister deems necessary. Penalty of dissolution.

211. May 3. *RGBl.*, I, p. 185. Dissolution of communist atheist organizations.

212* May 12. *RGBl.*, I, p. 192. Adaptation of property, inheritance and land purchase taxes to the fall in values since January 1, 1931. Twenty per cent reduction.

213* May 24. *RGBl.*, I, p. 246. Authorizes the government to take the necessary measures for execution of the credit agreement with German public debtors.

214* June 14. *RGBl.*, I, p. 273. Measures for the maintenance of unemployment benefits and social insurance as well as lightening of the welfare

[1] N. B. that each presidential ordinance is the subject of many bulky governmental ordinances so that the effect of the presidential ordinance cannot be appreciated without a study of the regulations issued thereunder. The index to the *Reichsgesetzblatt* furnishes a convenient indication under each ordinance of all the further orders issued which relate to it.

LICENSED TO UNZ.ORG
ELECTRONIC REPRODUCTION PROHIBITED

burdens of the communes. To assure the financial execution of the unemployment benefits in the fiscal year 1932 the government of the Reich can (1) change the amounts of the unemployment benefits but nevertheless may not lower the amounts of the benefits below the level of the relief measures; (2) make the unemployment benefits depend on the beneficiary's need; (3) dispose of surplus in the insurance fund in other branches of unemployment relief. The government can change or suspend the provisions of the law relating to labor exchange and unemployment insurance to the extent required to make these powers effective.

215* June 14. *RGBl.*, I, p. 285. Administration of law. Limits right of appeal in criminal and civil matters. Limits right to call witnesses in criminal matters in court of first instance.

216. June 14. *RGBl.*, I, p. 297. Political disturbances.

217. June 28. *RGBl.*, I, p. 339. Political disturbances.

218* June 29. *RGBl.*, I, p. 341. Extension of law of July 15, 1930 (*RGBl.*, I, p. 215), relating to the performance of foreign motion picture films.

219* June 30. *RGBl.*, II, p. 153. Regulates revenues and expenditures of the Reich for the fiscal year 1932 [8,219,245,100 RM] until the enactment of a budget law. See *RGBl.*, II, p. 173 [Order of the minister of finance of July 2, 1932].

220* July 5. *RGBl.*, I, p. 347. Extends the application of the grain law of March 26, 1930 (*RGBl.*, I, p. 88) to durra, an Asiatic variety of sorghum.

221* July 16. *RGBl.*, I, p. 357. Extension of the measures for *Osthilfe* to the eastern territories of Bavaria.

222. July 20. *RGBl.*, I, p. 377. Appointment of a federal commissioner for Prussia. The chancellor is named as commissioner. He is empowered to remove the members of the Prussian ministry from office, to take over the functions of the Prussian minister-president and to entrust other persons with the direction of the other ministries as federal commissioners. All the powers of the Prussian government may be exercised by the federal commissioner. [Issued under paragraphs 1 and 2 of Article 48.]

223. July 20. *RGBl.*, I, p. 377. Public security and order in Greater Berlin and the Province of Brandenburg. Suspends articles 114, 115, 117, 118, 123, 124 and 153. The executive power is transferred to the minister of defense who may hand it on to a military commander. The holder of the executive power is placed at the head of the police in the territory.

224. July 26. *RGBl.*, I, p. 387. Revocation of 223.

225. July 29. *RGBl.*, I, p. 389. Internal peace. Forbids all political assemblies from July 31 to August 10, 1932.

226. August 9. *RGBl.*, I, p. 403. Political terror. Imposes extraordinary penalties for political murders, outrages, etc.

227. August 9. *RGBl.*, I, p. 407. Extends 225 from August 12 to August 31, 1932.

228* August 13. *RGBl.*, I, p. 411. Spring manuring. Finance minister is authorized to stand as surety up to 14.2 millions of Reichsmarks for credits issued to finance the purchase of fertilizer.

229* September 4. *RGBl.*, I, p. 425. Revival of industry. Forty per cent reduction in sales, profits and real property taxes which fall due between October 1, 1932 and September 30, 1933. Taxpayers receive scrip to the amount of the reduction which will be accepted in payment of taxes due from April 1, 1934 to March 31, 1939. For the transport tax due between October 1, 1932 and September 30, 1933 the reduction is 100 per cent. Under section 1 (2) of the first part and chapter everyone who for the period October 1, 1932 to September 30, 1933 employs in any quarter-year more workers in his domestic business than he employed in June, July and

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ELECTRONIC REPRODUCTION PROHIBITED

August of 1932 is entitled to a general tax remission payable in tax scrip of 100 RM. for each additional worker so employed. The German stock exchanges (§ 18) may deal in these tax scrips. Twenty per cent of the face value of the scrip may be used in the payment of taxes in each of the five fiscal years, 1934 to 1939. The scrip yields a premium of 4 per cent the first year, 8 per cent the second and so up to 20 per cent for the fifth year. Chapter II reduces the penalties for tax arrears from 1½ per cent to 1 per cent for each half month of arrears. Part II authorizes the government to take any measures of social policy necessary for the maintenance of social relief and easing the burdens of industry and finance. Part III authorizes the minister of finance to guarantee the credit transactions of mutual loan societies, consumers' coöperative societies up to 45 million RM. capital sum and 3.4 millions interest.

230* September 19. *RGBl.*, I, p. 445. Suspends operation of § 29, paragraph 3 of the Banking Law until September 20, 1934.

231* September 24. *RGBl.*, I, p. 447. Joint rights of holders of debentures under the laws of December 4, 1899 [*RGBl.*, p. 691] and May 14, 1914 [*RGBl.*, p. 121]. Amends both laws.

232* September 27. *RGBl.*, I, p. 473. Relief from debt of agricultural properties by means of a conciliation procedure. Farmer may—if he must harvest his crop to pay his debts—apply to the district court for the appointment of a mediator (*Vermittlungsperson*) to effect an agreement with his creditors. The mediator supervises every transaction of the farmer including his expenditures for the sustenance of himself and his family. The mediator is under the supervision of the district court. Measures of execution are not permitted during the period of the mediator's supervision.

233* September 27. *RGBl.*, I, p. 480. Lowering of interest rates for credit extended to farmer by two per cent but not below four per cent for period from October 1, 1932 to September 30, 1934. Interest reduction is added to the capital amount of the debt.

Even as thus severely abbreviated the titles of the ordinances disclose the wide range of presidential action under Article 48. The decrees relating to the preservation of order require no special comment. When disorder is threatened the usual measures of martial law are taken. But many alternatives are possible in dealing with public finance and what may be called national economy. These decrees, therefore, warrant brief comment. The most important are the four emergency ordinances — all promulgated by the Brüning cabinet — and the September 1932 von Papen ordinances. Manifestly any attempt fully to outline their scope would require the quotation, or at least paraphrasing, of the regulations themselves and all that can be attempted here is a most general indication of the extent to which control has been exerted.

For the purpose of balancing the budget of the Reich the emergency ordinances give the government wide discretionary powers. The maximum total of expenditures is fixed and

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ELECTRONIC REPRODUCTION PROHIBITED

detailed principles are laid down on the basis of which the necessary reductions of public costs shall be made. Retrenchment is effected in two ways: (1) by the federal, state and municipal governments or by public corporations, and (2) by successive and drastic reductions in salaries, wages and pensions paid from the federal treasury. The federal executive has likewise decreed budgetary equilibrium for the Länder. The municipalities and groups of municipalities are subject to state supervision. Whenever municipal expenditures exceed revenues the board of supervisors (appointed by the state government to supervise the administration of municipalities) must see to it that all necessary measures are taken to avert a deficit and, in case the municipal authorities refuse to act, it may supplant them by a state commissioner who takes over the administration of the municipality to the extent dictated by the need of balancing the budget.

Apart from the budgetary control the principle of the supervision of municipal finances by the state government involves a close scrutiny of municipal indebtedness. Municipal loans and other credit operations are not legally valid without the authorization of the state government. A funding commission (including representatives of the federal minister of finance, the Reichsrat, the participating state government, and the Reichsbank) is set up at the federal ministry of finance for the funding of short-term debts of the states and the municipalities. The funding commission gives its consent to a loan only on condition that the applicant municipality undertakes (1) in the case of deficit to meet at least one half of the interest and amortization payments through the reduction of expenditures and only the second half by other measures; (2) to take steps, with expert advice, for securing larger yields from municipal utilities without increasing rates and to put the increased funds in trust; (3) to guarantee and set aside the sums needed for interest and amortization and, in so far as this is impossible, to raise the rates of municipal utilities or to allow additions to the agreed upon rates of privately operated utilities to the extent considered necessary by the funding commission. These additional revenues are administered separately through a trustee.

LICENSED TO UNZ.ORG
ELECTRONIC REPRODUCTION PROHIBITED

When an issue of bonds is resorted to the federal minister of finance may guarantee the payment of interest and amortization and the state government becomes liable for one-third of the amount guaranteed. Whenever this federal guarantee is given the municipality obligates itself, on demand of the funding commission, to turn over to an authority designated by it part of its property to be administered in trust and, until the guarantee lapses, not to contract new debts without the consent of the funding commission. In case a municipality fails to meet any of these obligations or is in arrears more than one month with its interest and amortization payments the state government is to take the measures necessary to compel fulfillment. Arrears of more than two months on interest and amortization payments may result, on the request of the funding commission, in the withholding of an equivalent amount of the state's share from the receipts from federal taxes to which the state may be entitled.[1]

The other side of control by the Reich of state and municipal finances relates to the federal subsidies to the Länder for their own use and for distribution to the municipalities. The decrees make many changes in the fiscal laws; under Article 48 the executive in effect determines the percentages of the proceeds of federal taxes that shall be allocated for expenditures by the Länder and municipalities. The executive likewise prescribes the limits within which the Länder and municipalities can levy taxes of their own.

This federal control of non-federal taxes involves no new principle. The control is simply more meticulous than it has been and is determined by the executive rather than by the Reichstag.[2] It should be noted, however, that the elaborate

[1] The fourth emergency ordinance made these measures prescribed by federal decree inapplicable when they were matched by corresponding provisions of the state law.

[2] Art. 11. In so far as is necessary the Reich may by law prescribe fundamental principles with respect to the imposition and collection of state taxes in order to safeguard important commercial interests, or in order to prevent:

(1) Prejudice to the national revenues or the commercial relations of the Reich.

(2) Double taxation.

LICENSED TO UNZ.ORG
ELECTRONIC REPRODUCTION PROHIBITED

provisions of the emergency ordinances, supplemented as they are by decrees issued by the federal minister of finance with the consent of the Reichsrat, reduce the province of state law to a minimum, whittle down state and municipal autonomy and bring out strikingly the functionally unitary character of the republic created by the Weimar Constitution. *Il n'y a que le premier pas qui coûte,* and the federal control which was essential because of the economic emergency will make it easier for federal control to be continued in normal times and for schemes of further centralization to be more sympathetically considered.

A second group of emergency provisions relates to what may be described as the national economy. They may be subdivided under three heads: (1) social welfare policy; (2) direct governmental participation in and assistance to private business; (3) governmental regulation of the national economy. So far as social welfare is concerned the emergency decrees revise all the social insurance laws in the light of the situation created by the economic emergency. No new principles are announced. Benefits are reduced and contributions to the various funds are differently distributed. In respect of government participation in business and governmental regulation of the national economy, far-reaching measures have been taken. What follows will serve to indicate the general trend and the mechanics of the latest and largest instalments of state socialism in Germany.

The ordinance of July 27, 1931 (170) empowers the federal government "in the interest of the resumption of ordered circulation of payments" (a) to make whatever investments are necessary for its participation in corporate enterprises; (b) to use its resources as security for the invigoration of the national economy. For the relief of agriculture many devices

(3) Levies on public communications or institutions which are excessive or which interfere with communication.

(4) Discriminatory taxes upon imported goods as against domestic products in interstate or local commerce.

(5) Export premiums.

Constitution of the German Reich of August 11, 1919. McBain and Rogers, *The New Constitutions of Europe.*

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ELECTRONIC REPRODUCTION PROHIBITED

have been used. Legal and administrative machinery is set up to safeguard harvests and to alleviate agrarian indebtedness "in such a manner as to protect the interests of both creditors and debtors." If what are called "insurance proceedings" are started the agriculturist is protected against foreclosures not only in respect of land but in respect of personal property or crops which may have been hypothecated. During the "insurance" régime the necessary funds for the management of the business, the preparation and gathering of the harvest and the resumption of debts are advanced by the Bank of Industrial Securities. These funds are repaid out of the proceeds of the next harvest in precedence of all other debts. For the special relief of East Prussia money has been poured out in a vain attempt to enable the agriculturists there to throw off part of their load of indebtedness. *Osthilfe* has exceeded in *largesse* anything attempted for the relief of American farmers—but to no avail. The program is estimated to have cost the German people a billion dollars. There was a debt-relief grant of one hundred and fifty millions, a moratorium, a purchasing board to stabilize rye and wheat prices, and increases in the tariff rates on agricultural products.[1]

With the consent of the state government concerned the federal government guarantees loans for the purpose of improving housing conditions and the construction of small homes. The subsidies for new construction seek to reduce unemployment. Rents have been forced down; there are provisions for the termination of certain leases, and foreclosures are controlled. These latter measures are designed to prevent the squandering of real estate values on the demand of claimants, to stop the conversion of immovable property into cash, and to reduce the cost of foreclosures to a minimum.

[1] The noted economist, the late Lujo Brentano, is said to have written to a friend: "In order to help 8,000 bankrupt Junkers the government raises tariffs. What the German people have paid for this purpose, which will not be realized anyhow, is already twice what we have to pay in reparations, thanks to the Young Plan. Only one dare not say this publicly lest one be accused of treason." *Not To Be Repeated: Merry-Go-Round of Europe*, p. 179 (New York, 1932).

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ELECTRONIC REPRODUCTION PROHIBITED

The emergency decree of July 13, 1931 (158) empowered the federal government to assume responsibility for the Darmstädter und National Bank, "the liquidity of which is threatened owing to monetary crisis." That involved primarily a "deficiency pledge" for meeting the obligations arising from savings deposits, current accounts and bills accepted by the bank. As a result of this assumption of responsibility the federal government may stop attachment, receivership and bankruptcy proceedings both against the capital of the bank and the property of a personally liable member of the company if it deems this necessary in the interests of the creditors. The entire administration of the bank is transferred to the federal government which is authorized to issue all necessary legal ordinances and administrative regulations and to impose, for violation of these, three years' imprisonment or a fine or both.

The so-called first emergency ordinance (December 1, 1930; No. 151) made drastic amendments of the banking laws and gave the federal government sufficient power to enable it to direct the operations of German banks. A decree of September 9, 1931 (178) empowered the government to take the necessary measures for the execution of the standstill agreements reached between groups of foreign creditor banks and domestic debtors. Trading in foreign bills of exchange was made subject to restrictive regulations; only the Reichsbank, or those institutions of credit to which it has delegated its powers, may sell or buy foreign means of payment or demands on foreign currency in exchange for domestic means of payment. A foreign bills-of-exchange agency (Stelle für Devisenbewirtschaftung) authorizes (a) the granting of credits in Reichsmarks or gold marks to persons residing abroad; (b) the transfer of demands in Reichsmarks or gold marks to accounts which are kept abroad; and (c) the disposition of demands in Reichsmarks or gold marks which had arisen before the ordinance regulating trading in foreign bills of exchange became effective.

Elaborate provisions seek to make it possible for business and industrial companies to remain solvent. Reduction of capital, balance sheets which need not list securities at their

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maximum prices, a moratorium on debts which have matured, the reduction of prices, interest rates, salaries and wages in private enterprises—the federal authorities can permit or compel all such actions. A federal commissioner may not only intervene in the market of foods and industrial commodities but may also order a decrease in the utility rates—gas, electricity, etc.—and in the prices charged for handwork, repairs, etc. He strives first for voluntary reduction but if he fails he may make it mandatory. He may suspend a business catering to daily necessities—goods and services—padlock its premises and forbid trading in its products throughout German territory if he decides that those at the head of it "do not possess the requisite reliability." The September 1932 decrees issued under the von Papen government made ingenious proposals for the stimulation of industry: a bonus to employers for every unemployed person put to work, with the hope that the expenditure will be self-liquidating through savings on unemployment benefit; subsidies to business in the form of tax remission certificates, which will be discounted and redeemed between 1934 and 1938—a mild form of inflation.

In the United States the federal government, through the Reconstruction Finance Corporation and similar agencies, has been bolstering up banks, railroads and other corporate enterprises. Support has been financial. There has been little or no compulsory reorganization of private business and the government has assumed no responsibility for preserving capital structures from complete collapse. Agricultural relief has been attempted in various forms and American legislation in respect of housing somewhat parallels the German measures. In Germany, however, the emergency decrees and the action taken under them enable the government to disregard all obligations of contracts. The Eighth Commandment does not stand in the way of an ordered control of the financial life of the country.

So far as public finance is concerned the German government is all-powerful. In the United States, on the other hand, where municipal budgets are sadly unbalanced, where states are not free from financial troubles, and where the federal

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government is not as opulent as yesteryear, constitutions and traditions of autonomy prevent a centrally directed attempt to prevent collapse. One may hope that the future course of American public finance will not be such as to cause regret that the Constitution of the United States does not contain an Article 48.

That article, as was said above, has already been responsible for an enormous juristic literature. The German public lawyers are well-nigh unanimous in admitting the necessity of the article and in approving the acts which have been performed under its authority. They differ, however, in respect of the meaning of its language, the powers which it confers on the president, and the manner in which those powers should be exercised. In the light of the refusal of the courts to restrain the president, these difficulties are somewhat academic. Even so, an understanding of the scope and mechanics of Article 48 is not complete without an analysis of the opinions of the lawyers and of the judicial decisions which have been handed down.[1]

LINDSAY ROGERS
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COLUMBIA UNIVERSITY

[1] This series of articles is to be continued in an early issue of the POLITICAL SCIENCE QUARTERLY.—ED.

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REVIEWS

The Soul of America. By ARTHUR HOBSON QUINN. Philadelphia, University of Pennsylvania Press, 1932.—viii, 261 pp. $3.00.

In his Foreword Mr. Quinn states that the time has come for a survey of the American spirit from a new point of view, and that he has "tried to cut through the crust of conventional opinions and clichés already outworn, to discover the more profound causes of our conduct". In fact, however, we do not find ourselves in any unexplored country. The route leads to no fresh goal and the scenery along it is familiar.

From the somewhat mystical title and headings of sections—"The Soul of America", "The Birth of the American Soul", "The Baptism of the Soul", "The Confirmation of the Soul", "America Comes of Age" and "The Qualities of the American Soul"—we might anticipate perhaps a penetrating psychological exploration of the American psyche, some such study as Madariaga made in his *Englishmen, Frenchmen, Spaniards.* Nothing of that sort develops.

What we do get is a far from profound account of certain rather obvious characteristics of American life and thought. There are at least two methods, both equally valid, which may be used in delineating and explaining such characteristics. We may trace the history of the American people and show when, where and why certain traits developed; or we may list the traits and treat each of them analytically, genetically or descriptively. Mr. Quinn uses both of these methods. Somewhat more than half of the volume is a historical narrative, heavily, and rather interestingly, stressing the influence of literature. This method is abandoned when 1920 is reached, and we then have a series of short essays on our Democracy, Efficiency, Liberality, Provincialism, Individuality, Humor and Vision, as the qualities of the American Soul.

Mr. Quinn's history is not always convincing. There is an un-

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usual number of minor errors, including four wrong dates in as many successive pages. To say that Jefferson knew Louisiana was for sale and bought it, is to misrepresent that transaction. Polk did not add more territory to the United States than any other president. Monroe, not Madison, was president in 1825. These and other such slips, as the reviewer well knows, are easy to make when the canvas is large, but there are other more serious ones which indicate lack of knowledge of men and times and also slipshod thinking. To say that Roosevelt dictated the nomination of Taft and then "waited his turn again" is to misinterpret the situation. To contrast the War of 1812 as one of resentment with the Mexican War as one of aggression is to misunderstand the real causes of the earlier struggle. In one paragraph we are told that Andrew Johnson was right and sacrificed himself for his cause, and, a few lines lower, that the American people have always seen to it that a president who would rather be right than president has always been able to be president again—though Johnson obviously was not. Similar careless generalizations scattered through the text make us question not only the author's facts, as when he states that every dollar spent by the government in the Great War was honestly spent, but also whether he was even thinking about what he was saying, as when he explains the lack of great men other than Cleveland between 1884 and 1896 by the remark that "it seems to be the lot of nations to have one great man at a time". How about Washington, Hamilton, Franklin, Jefferson, John Marshall, Madison and others in the generation from 1776 to 1810? When we read "how simple would have been the process of Reconstruction had Lincoln lived" we conclude that Mr. Quinn knows little of the forces of that period and their strength. Thaddeus Stevens has been accused of many things, but when again we read that he and his group were responsible for the creation of organized crime in America we not only realize that there must be large lacunae in Mr. Quinn's knowledge of the American past but we mistrust his historical evolution of one important trait of the American soul. Our confidence is not increased by his assertion that "the fundamental quality of our civilization is respect for law"! Again we mistrust his interpretation when we find him attributing our loyalty to the infusion of the Celtic Irish and our sense of logic to our French population. In 1790 the French numbered less than one-tenth of one per cent of our people, and the subsequent immigration has never been large. Speaking of immigration, the great change did not begin, as he states, about 1870 but about 1885. It is

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characteristic of the book that Franklin's example is cited as having made "many an American turn to the quick amassing of riches" whereas little or no stress is laid on the influence of a virgin continent and its opportunities; and that the influence of Poe on our Soul is given three pages, whereas the frontier receives scant mention—indeed it does not appear in the index at all. Other important influences are similarly omitted.

The essays on our several qualities are quite uncritical in their assumption of our virtues in contrast with those of foreigners, notably in the paean of praise of our liberality in lack of censorship as contrasted with the English. Mr. Quinn's accurate knowledge of Europe is apparently limited. For example, his invented reason for the banning of *Green Pastures* on the London stage by the censor has no foundation in fact; and anyone who has been at all intimate with the life of several nations in the past twenty years of war and peace will hardly agree that free speech is "the proud privilege of the American". A spread-eagle nationalism characterizes the essay on our "Vision". The incandescent light is attributed wholly to Edison with no mention of the English inventor Swan; the credit for radio is given to America with no mention of Marconi; Clara Barton in the Civil War is described as a pioneer in her field in complete forgetfulness of Florence Nightingale in the earlier Crimean War. The method used in this section of the book of taking an example from one country or another and generalizing from it is a dangerous and uncritical one which may be made to yield any desired result. Occasionally the author descends to drivel, as when he cites a school-boy's essay of 1880 predicting that when the country shall all be lit with electric lights there shall be a "reign of peace, prosperity and comfort", or Jesse Lasky's employment of foreigners for the talkies so as to keep a world market, as both splendid examples of American "vision".

The best parts of the book are those dealing with the expression of our spirit in literature and the drama, though even in that we are led to question the author's critical judgment when, for example, he sets O'Neill above every other author of any age or land in his treatment of the relation of the individual to the Deity. The book is not without interest but it cannot be said to disclose to us "the more profound causes of our conduct". The proof reader should have caught many slips in grammar.

JAMES TRUSLOW ADAMS

LONDON

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America Faces the Future. Edited by CHARLES A. BEARD. Boston and New York, Houghton Mifflin Company, 1932.—viii, 416 pp. $3.00.

This is one of the most interesting books that has appeared in recent years. It is, in fact, an amazing production—a book that would have been inconceivable a few years ago. Those who in the middle twenties questioned the all-pervading beneficence of our economic order were but voices crying in the wilderness. In the first part of this book Dr. Beard has collected statements from leaders in politics, education, business and religion asserting that all is not well with our economic order. In the second part are collected various suggestions and plans as to how this economic system can be improved. Beard calls this section of his book "Blue-Prints for a Planned Economy" and in it he includes the Swope Plan, the proposals of the Committee on Continuity of Business and Employment of the United States Chamber of Commerce, the plan of the American Federation of Labor, the State Plan of Governor Philip F. LaFollette and extracts from speeches by Governor Roosevelt on agricultural planning.

All of this is pretty conclusive evidence that many of our most responsible leaders have abandoned the once sacred theory that *laissez-faire* brought economic salvation. It is certainly a phenomenon of no small importance that many American leaders are in agreement to that extent. Marxians might well count it a victory that the failure of *laissez-faire* is thus realized. But one victory does not mean a successful war. Most of the plans incorporated in this book have already received more or less newspaper publicity and a persusal of them shows at once that they propose no substitution of socialism for capitalism. All would retain the profit motive as the primary impetus in our economic life, although all of them would evidently soften to some slight extent the bitterness of competition and the misery from the inequitable distribution of wealth and uncertainty of livelihood.

Briefly, all that they call for is some effort to modify by intelligent planning the evils of the present economic order, so that business may be better stabilized. Dr. Beard, to whom we owe a debt of gratitude for bringing these plans together in a single volume, describes the goal as "planned economy". Others have called it "modified capitalism". Either term is reasonably descriptive. Some of the plans are startlingly progressive, particularly that of

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Governor LaFollette, which, in the opinion of the reviewer, goes about as far in the direction of "modified capitalism" as one could go and still maintain the essentials of capitalist economy. What an advance these plans are over the dominant economics of the boom years of the middle twenties can be seen only by a rereading of President Hoover's Indiana speech of June 15, 1931, which has been inserted in the volume previous to the editorial conclusions, a speech in which he characterizes these plans as "an infection" from the "five-year plan" of Russia, pours scorn upon projects for integrated planning, and then summarizes the opposing philosophy.

After reading this book, two questions inevitably present themselves. First, can a "modified capitalism" which will work be put in operation, and second, is it adequate? To both questions Socialists would unhesitatingly answer, No! The moral bankruptcy of the profit system, they hold, is so demoralizing that no economic order based on that system, no matter how well controlled, could operate for universal prosperity and happiness. Could "modified capitalism" iron out the business cycle and more equitably distribute wealth? Furthermore, are American leaders sufficiently committed to such a scheme to put it in operation soon enough to ward off economic collapse and prevent the coming of another economic system? The answers to these questions only the future can decide. This much seems evident: long before capitalism had shaken off the shackles of feudalism, it was being modified by social legislation, regulatory laws and other restraints, and modification of some sort will inevitably continue. The speed and the direction of this process will be determined not alone by domestic exigencies, but also by the character of capitalistic modification in the world at large.

HAROLD U. FAULKNER

SMITH COLLEGE

The Growth of Political Thought in the West: From the Greeks to the End of the Middle Ages. By CHARLES HOWARD MCILWAIN. New York, The Macmillan Company, 1932.—vii, 417 pp. $3.50.

Professor McIlwain has made in this volume a substantive addition to the still curiously scanty literature, particularly in English, which deals in any adequate fashion with the development of political thought. In the Preface he explains that his object has been to trace the *growth* of our ideas about the state and government. The volume

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itself does not carry us beyond the fifteenth century, and it deals with four main periods, the classical Greek, the Roman, the Early Middle Ages and the Later Middle Ages. Professor McIlwain admirably brings out the legacy of these periods to the political thought-forms of the modern world. But it is another and possibly more hopeless task to trace through them any integral growth of political thinking as such. After all, whatever the dialectical skill of political argumentation in the Later Middle Ages, its tenor is more alien to our thought today than is that of Aristotle. And while Greek thought retains vitality because it deals so frankly with the essential problems of all political life, with the nature of the bond which unites men in the ordered *polis*, yet the *polis* itself was a totally different conception from that which we now evoke by the term "state".

What in fact the author gives us is a series of three distinct studies in the development of political thought rather than one continuous study. For this the historical material and not the author is at fault. In spite of the intention announced in the Preface the author, because of his own understanding of the historical context of each period, emphasizes the difference both of problem and of interpretation which the representative thinkers of the different periods reveal. He certainly does not make the common mistake of assuming that Plato wrote about "republics" or Aristotle about what we call "constitutions". Instead he gives us an unusually clear exposition of the peculiar Hellenic character of the ideas which these thinkers elaborate. The account of both Plato and Aristotle is no mere refurbishing of worn materials but a fresh rendering by the author. On the whole I find the account of Aristotle more adequate than that of Plato. To say, for example, that to Plato "discretion if it is wise discretion is higher than the strait-jacket of the law" is to present one aspect of his thought with which another, that revealed for example in the *Crito,* is in clear contradiction. In fact Plato's theory of political life is not nearly so unified and coherent as Professor McIlwain seems to make out. There is a development or at least a change of speculative thought as we pass from the earlier to the later dialogues, and it is doubtful if we should take the *Republic* and the *Laws* together as though they formed a consistent whole.

The emergence of the specific idea of the state, of the principle that sovereignty emanates from the *populus*, and of the legalistic conception of a political constitution is excellently shown in the chapter on Rome. As the author says, "it is lawyers' terms with

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which we are dealing here, not philosophers' "—and this in itself reveals the broad difference between Rome and Athens. Still more do we enter into a different world when we pass to the Middle Ages. Across that whole period lies a question-mark which never disturbed the Greeks and which has in effect ceased to disturb ourselves, the problem of the respective claims over the *citizen* of the two never coördinated authorities, the ecclesiastical and the political. The problem, as the author recognizes, was, on the terms on which it was propounded, really an insoluble one. Within the medieval period itself there was a distinctive development of political thought, and Professor McIlwain is a capable guide through the strange confused germinal stage of the Early Middle Ages as well as through the full-bodied speculative thought of the time from the eleventh to the fourteenth centuries. But whether the issue lay between Gregory VII and Henry IV or between Boniface VIII and Philip the Fair, always the same ineluctable problem is presented, and not until the break-up of the form of society it assumed and of the forms of thought corresponding to it does a new age of political theory begin. It is at this point that Professor McIlwain ends the story. There is still greater need for an adequate interpretation of the growth of political thought from that point onward.

R. M. MACIVER

Some Aspects of the Tariff Question. By. F. W. TAUSSIG. 3d ed., with the coöperation of H. D. White. Cambridge, Harvard University Press, 1931.—xiii, 490 pp. $4.00.

Every student of tariff problems has welcomed the appearance of this third and substantially enlarged edition of Professor Taussig's investigations of the effects of American protection. Since their first appearance, in 1915, these studies have been in a class by themselves. Their combination of a masterly handling of the major problems of theory with a sure feeling for practical difficulties and practical values has made them both a rich treasure for teachers and a model of procedure for students.

The new edition, prepared with the assistance of Mr. White, carries the principal lines of the story forward to the present time, and adds a new chapter on rayon. The sections which are brought down to date are those dealing with sugar, iron and steel, silk, cotton, wool, woollens and worsteds. Professor Taussig's earlier conclusions here are familiar, and do not require elaboration. Before the war a

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considerable part of the domestic sugar and wool-producing industries, and substantial sections of the wool-manufacturing industries, were completely dependent on the tariff for their continued existence, and gave little promise of ever being able to stand on their own feet. The iron and steel industry, on the other hand, was quite independent of protection except in a few relatively unimportant lines and regions. The chief effect of the tariff here was to add a little to those profits and that control, which understandings between the leading companies would in any event have secured. The cotton industry was but slightly influenced by the tariff in either direction, while the silk industry was apparently—though with reservations—that rare thing, an example of the successful application of protection to a young industry. The outstanding feature of Professor Taussig's renewed study of these industries, in the twenty additional years now elapsed, is both remarkable and essentially negative. It is that "no changes took place that modify in essential respects the general conclusions reached . . . in 1915. The reasoning applied . . . is not modified, rather confirmed." That this should be so is both a tribute to the accuracy of the earlier work, and an interesting commentary on the enduring willingness of the American people to penalize itself without prospect of real return.

The new chapter is the one on rayon. Here is an industry whose difficult beginnings and recent phenomenal growth have offered one of the great dramas of modern business and applied science, and an industry rich in problems which the economist can pursue with profit. Yet for the students of tariffs and their effects, this very abundance is an embarrassment. The influence of the tariff has been outweighed, and in some directions completely driven from sight, by the influence of other more powerful forces. The American rayon industry as it stands today is of essentially foreign origin. The largest part of the patents, processes, original technical staffs, even the original financial control and management, have come from abroad, chiefly from England and Germany. None of the earlier enterprises conducted before the war with purely American managements and technical staffs achieved substantial success. The chief effect of the protective tariff on rayon has been, not to stimulate the development of a truly indigenous American industry, but merely to compel the successful foreign manufacturers to build and operate plants in this country, as being in the long run cheaper than trying to force rayon made abroad over the American tariff itself. The procedure has been in essence precisely the same as that which our

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own manufacturers have followed in building plants abroad, to evade foreign tariffs, for the manufacture of automobiles, radiators, sewing machines and the like. Whether the result in the rayon case can be regarded as on balance beneficial to the United States as a whole, is evidently a question which should give the unqualified protectionist substantial food for thought.

JAMES W. ANGELL

Japan: An Economic and Financial Appraisal. By HAROLD G. MOULTON, with the collaboration of JUNICHI KO. Washington, The Brookings Institution, 1931.—xix, 645 pp. $4.00.

So many statements are made concerning Japan's economic position, especially in relation to its political policy, and so little evidence is adduced, that a volume like this is welcome. This is said without any illusion that data are always a key to understanding or in any confusion of identity between tabulation and research. Pedestrian pursuit of measurable fact is at one extreme; the easy impressionism which characterizes most writing about Japan is at the other.

Dr. Moulton and his colleagues have not sought to give an explanation of Japan's position in the world or of its policy, nor have they even sought to show the links between economic forces and political program. They have been occupied only in tracing Japan's economic development since the Restoration and charting the broad plan of its economic structure. In this they have succeeded uncommonly well. The result is a book invaluable to students of the social and cultural transformation now going on in Asia.

A brief introductory section quickly running over Japan's historical development and describing its form of government is followed by the body of the book, which takes up successively the natural resources of the country, the development of transportation and public utilities, industrial development, commercial and financial organization, public finance and international financial relations. In a separate part there is a discussion of the social implications of the amazing economic transition and finally a statement of contemporary problems and policies.

Dr. Moulton quite rightly emphasizes the important rôle which government has played in forcing the pace of the transition, not only by direct operation and encouragement but by subvention. His conclusion that Japan's industrialization would have been neither so rapid nor so successful without government participation and

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assistance is unanswerable. He expressly excludes as outside the scope of this inquiry the question whether a slower process would not have been socially healthier—the most important question raised by Japan's economic development—but he has also neglected to take into consideration another question which is proper to an economic study. This is whether lavish government subsidy, inevitably made to favored groups, has not by providing artificial shelter served to prevent the Japanese economic body from building up an immunity to disease. Have not the fibers of Japan been softened? Have the Japanese had opportunity to discover and apply any economic prophylaxis? Obviously they have not. And it may be that they would have learned not to pay dividends out of capital and strike their accounts without allowing for depreciation had they not been sheltered by lavish government doles from the consequences of mistakes as well as from the rigors of competition. Perhaps the same question may yet be raised with regard to America. But the very bounty of nature in America permits the American nation a margin of recklessness denied to other countries. The fact is that Japan is not well equipped to meet the economic competition of other countries except where it has insuperable advantages, and for this fact the paternalism of the government is partly responsible. There are also economic as well as political and social implications in the fact that subsidy has built up a body of privilege and led to a system of political and financial alliances based on privileges. A military feudalism has given way to a modernized financial and industrial feudalism. And feudal loyalties militate against economic efficiency.

Dr. Moulton is chary with conclusions, but his evidence leads him to the belief that only by industrialization can the needs of Japan's excess population be met and the fields for industrial expansion are continental Asia and North America. Expansion into continental Asia is, however, affected by political considerations, namely, the state of Japan's relations with China and the prospects of early stabilization in China. These two considerations are not unrelated. They are pendent to the underlying political question in the Far East: Does Japan wish to conquer China or to profit from its economic development, and is Japan willing to concede that the second is possible without the first?

The appendix contains a large body of statistics, concise, well organized and highly useful.

NATHANIEL PEFFER

NEW YORK CITY

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A Treatise of Commerce. By JOHN WHEELER. Reproduced from the London edition of 1601, with a bibliographical note by George Burton Hotchkiss. Published for The Facsimile Text Society by the Columbia University Press, New York, 1931.—125 pp. $2.00.

A Treatise of Commerce. By JOHN WHEELER. Edited with an introduction and notes by George Burton Hotchkiss. New York, New York University Press, 1931.—xii, 484 pp. $6.00.

It is a strange caprice of fortune that a text so long neglected should be almost simultaneously reproduced in facsimile from the two known editions. Although an abstract of this treatise was given by Smith in his *Memoirs of Wool* and short extracts were published by Lingelbach in his collection of sources on the Merchants Adventurers, no general reprint has previously been attempted. The book is a great rarity. Only three copies of the Middelburgh edition are known, and seven copies of the London edition.

Like most documents concerned with economic history, this treatise does not tell its own story. Its importance lies in its setting rather than in its text. As Professor Hotchkiss points out, it represents an early phase of the use of the press for publicity and propaganda. Literature of this type was designed to influence political action, and in England it soon came to be an important factor in the struggle between the Crown and Parliament. Pamphlets on political problems were not uncommon in the sixteenth century, but they rarely suggest that their authors entertained any ideas of attempting to exert specific pressure on the government. Before the close of the reign of Elizabeth a decisive change became apparent, and the attack on royal patents of monopoly brought the political tract into commanding importance as a means of organizing public opinion. In succeeding reigns, pamphleteering became an established feature of agitation and parliamentary lobbying.

The immediate occasion for the preparation of the "treatise" was the action of the Privy Council in March 1601. The exclusive privileges of the Company of Merchants Adventurers were withdrawn; the cloth trade was nominally opened to all, but the Earl of Cumberland was granted a license to export an unlimited quantity of cloth. In April, the Merchants Adventurers were attacked in a pamphlet by one Milles. The text of Wheeler's treatise, an answer to this double threat, was completed by June 6, 1601, and in August editions were published in Middelburgh and in London. In October

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and November, the patents of monopoly were debated in Parliament, and the privileges of the Merchants Adventurers were tacitly approved. The issue remained somewhat uncertain until the passage of the Statute of Monopolies in 1623-24; trading companies were then specifically exempted from the prohibitions of the act and other grants of monopoly privilege were restricted to the protection of property rights in new inventions for limited periods of time. The privileges of the Merchants Adventurers were continued, subject to some vicissitudes, until 1689, when the cloth trade to the continent was freed from all the older restrictions. Wheeler's treatise seems thus to have assisted in the establishment of the position of the company throughout the seventeenth century.

This treatise has commonly been regarded as an important source of information upon the Merchants Adventurers, but it must be confessed that it should be used with the greatest caution. The statements must be verified, at least in part, from other sources. The critical studies of Lingelbach, Price, Unwin and Scott have brought forward important masses of documentary material and provided a more trustworthy account of the origins, privileges and functions of the Merchants Adventurers than can be found in the pages of Wheeler's treatise. To the modern reader, the treatise will be chiefly significant as a polemic, which assisted in producing political action favorable to the company. The broader elements of the setting of the treatise are effectively presented by Professor Hotchkiss in the introduction to the Middelburgh edition.

ABBOTT PAYSON USHER

HARVARD UNIVERSITY

Germany's Road to Ruin. By KARL FRIEDRICH NOWAK. Translated by E. W. Dickes. New York, The Macmillan Company, 1932.—x, 382 pp. $5.00.

It is daily becoming more evident that the great turning point in modern international history was the "diplomatic revolution" which isolated Germany and created the Triple Entente. Nearly all analysts, even the German, of the diplomatic complications in the early reign of Wilhelm II lay much of the blame on the singular ineptitude of German statecraft at that crucial hour. But in apportioning the responsibility they differ. Bülow blames the Kaiser; Nowak blames Bülow; Meinecke and Gooch blame that subterranean misanthrope Holstein; Lichnowsky blames the Austrian alliance:

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some think the initial error was the abandonment of the Bismarck tradition, while others find that the trouble lay in a blind adherence to Bismarckian formulas no longer applicable to a changed world.

Mr. Nowak's book is in a double sense a contribution to the literature of the subject. His intimate knowledge of the period makes his book a valuable reference to the historian, while the charm of his style, the vividness with which he brings to life the German politicians who to most of us are mere names, and the general candid equity of his outlook, should recommend the book to many others as well. The author has his prejudices. He greatly admires Caprivi, Bismarck's successor, violently dislikes Bülow, and tends to soften judgment on the Kaiser. But his general fairness is everywhere evident, and can be illustrated by his impartial picture of the faults characteristic of British and of German diplomacy (p. 74).

> Time was bound to soften the rather rough edges of German statesmanship. There could hardly fail to come a type of statesman who did not confuse persuasiveness with stark force, other people's hesitations and reservations with traps and trickery. . . . If in the meantime, the British statesmen were to realize that it was not in the nature of things that one of two friends should for all time be strong and poor and the other strong and rich, if they would realize that equilibrium was not purely a matter of protection from aggression, but had its application also to everything which went to make up the vital interests of one party as of the other—then the way might after all be open one day to an Entente, perhaps even to more than that.

Or consider his excellent summary of the land-grabbing imperialism of the nineties (p. 130):

> It was the age of "compensations". If any State took possession of something, another State was entitled then to take possession of something somewhere else. The only party not consulted in the matter was the party at whose expense the compensation was secured. . . . Statesmen negotiated courteously, cordially, concerning the means of discreetly investing common theft with a new and universally recognized legality and respectability.

The author is no blind admirer of the Kaiser, whose faults of impetuosity, unguarded speech and personal vanity he fully admits. But he regards Wilhelm as wiser than most of his advisers, and urges that his biggest blunders, such as the Kruger telegram and the visit to Tangier, were pressed upon him against his own judgment by his ministers. Even the secret treaty of Björkö is defended as a well

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framed device to secure European peace which failed only because of the inconstancy of "dear Nicky". The blows which are spared the Kaiser are rained with pitiless severity upon the Kaiser's sometime servant and later critic, Bernhard von Bülow. There is a most amusing picture of Bülow as an actor practising the nonchalant manner of Mr. Balfour, and another of his promising to write "a book such as has never yet been written" about the Kaiser (a promise fulfilled in a very different sense of late from that in which it was spoken!). "Never did he recognize a sign in the heavens, never a change in the horizon. He assumed every opponent and every partner to be lying, as he himself was. He did not know that his opponents had long ago discovered that he not only was not straight but was an embarrassed mass of stupidity and universal muddledness" (pp. 232-33). This may be excessively severe on the Chancellor as an individual but it is not inept as an epitaph on the diplomacy of his time.

PRESTON SLOSSON

UNIVERSITY OF MICHIGAN

Economic Essays and Addresses. By A. C. PIGOU and DENNIS H. ROBERTSON. London, P. S. King & Son, Ltd., 1931.—vii, 215 pp. 10s. 6d.

This short volume, the work of two of England's most distinguished economists, contains meat out of all proportion to its relatively small number of pages. All the essays and lectures here brought together — with one exception for each author — have previously seen the light of day; and any one of them would warrant an extended commentary. To do justice to the volume as a whole in a single review is flatly impossible; the more so, since no single thesis or central thread of interest runs through it. Professor Pigou's six contributions are concerned with various aspects of what is customarily if badly described as "general" economic theory and methodology. The present reviewer was especially pleased with the first essay, on the function of economic analysis; it is a revindication of the work of the "pure" theorist, and in this day of religious devotion to statistics for their own sake, is a timely correction of an excessive deviation from the modern intellectual trend. The essay on demand and supply equations is an elaboration of the mathematical forms involved, but with no attempt at examining the reality, the stability or the inherent meaning of the demand and supply functions

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themselves—a deficiency also not adequately met by the preceding paper on statistical derivations. The other essays seemed to the reviewer either consciously devoid of substantial new content, or oriented on methods of attack so formalized and so abstracted from actual complexities as to make the results rather far off the ground —at least in societies where the power of the State is still so uncertain a quantity. But these comments may serve only to measure a hesitant yardstick.

Mr. Robertson's essays are more closely bound to one another. They are devoted to various aspects of monetary theory and monetary problems, and bear so characteristic (and pleasing!) a flavor that their authorship would have been instantly recognized even were they unsigned. The essay on theories of banking policy is especially noteworthy. In it, Mr. Robertson examines three general alternative principles which might be set up for regulating the operation of the banking system as a whole. They are the Gold Standard Principle, as practiced before the war; the Principle of (so-called) Productive Credit expounded in the Federal Reserve Board Report for 1923; and the Principle of Price Stabilization. To test these three principles, he sets up three criteria which they should meet, criteria concerned with the relation between the effects of applying each principle, on the one hand, and the flow of savings on the other. In their light, he finds the Principle of Price Stabilization the least unsatisfactory, but with reservations; and he reiterates the possible desirability of price increases as a means to secure the full benefits of technical progress. There is much matter here deserving further reflection on the part of the reader before acceptance or rejection; and if space permitted, one might profitably attempt to do battle with the equations (p. 103), or with the subsequent *obiter dicta* on the true character of saving and hoarding (pp. 123, 160). The next essay contains scattered but penetrating observations on the causes and remedies (and non-remedies) of the present world depression; and the next, on the doctrines of Messrs. Foster and Catchings, a subtle demonstration of the failure of these writers to establish conclusively the reality of that asserted recurring and *necessary* deficiency of purchasing power in profit-seeking societies, which is their main thesis. The notes on international trade are of somewhat less general interest (and the reader more than human if he does not occasionally rebel at Mr. Robertson's delight, in the second note, in setting up inconclusive conclusions!); and the lectures on world finance are useful but popularized in character.

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The book as a whole is one which every student of economics will welcome, if only because it brings so much scattered wealth conveniently together in one place. It may be hoped that the collection will itself focus attention on the substantial contributions and controversial propositions which it contains, and which might otherwise remain buried in the respectable but not wholly dust-proof files of the journals.

JAMES W. ANGELL

The International City of Tangier. By GRAHAM H. STUART. Stanford University, Stanford University Press, 1931. — xiii, 323 pp. $4.00.

This timely volume is the only comprehensive treatment of the subject which has come to the reviewer's attention. It embodies the fruits of extensive research in the files of the London *Times* and other periodicals, in the great collections of documents, such as *Die Grosse Politik*, and in the archives at Tangier, Washington and Paris. Furthermore, through residence in Tangier, the author has been able to make personal investigations of conditions there and to obtain information at first hand.

The treatment for the most part is historical. The origins of the existing international régime in Tangier are found in the establishment during the nineteenth century of a large measure of foreign control over Tangier, which was exercised in part by a number of international agencies—the Sanitary Council, the Hygiene Commission and the International Commission of Cape Spartel. An attempt to transform this inchoate international "government" into a regularly organized system of administration was frustrated by the coming of the European war. The postwar rivalries of the powers still further delayed action in the matter, and it was not until 1923 that an agreement could be reached. The statute then drawn up placed the control of Tangier and its environs chiefly in the hands of the British, French and Spanish; but the Italians were able to obtain an equal share in the administration of the Zone by the agreements of 1928.

The portions of the work which are likely to attract the especial attention of students of international affairs are those on the structure and operation of the various agencies by which the affairs of Tangier have been managed since foreigners first began to take a hand in its government. For it is largely on the basis of infor-

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mation regarding the success or failure of such experiments in international administration that an intelligent opinion is to be formed regarding the desirability of extending the use of this convenient device for dealing with certain embarrassing international problems. The structure and mechanism of the agencies in question—their composition and personnel, the powers and duties of their officials—the author in most cases sets forth exceedingly well. There is not much information, it is true, regarding the actual operation of those agencies which originated before 1923. On the other hand, in the case of the existing administrative systems as organized under the agreements of 1923 and 1928, not only is there a clear explanation of the mechanism itself but there is a full and interesting account of the way in which it has done its work. In spite of the economic burdens and restrictions imposed on the International Zone by the Powers, its affairs appear to have been administered with a surprising degree of efficiency. This is especially true of the supervision of public health and sanitation, the maintenance of public order, the management of the public finances and the formulation of the law codes. The mixed courts have not been so successful as other branches of the government, but efforts have been made to remedy their defects.

On one important aspect of the subject, however, we need much fuller information. The native Mohammedans and Jews together compose three-fourths of the population of the Zone. How have they fared at the hands of the international government, in the control of which they have so little share? Have they received justice in the courts? Have their economic interests been adequately protected? To questions like this the volume before us gives no clear answer.

With regard to the form and style of the work, there are a few matters which seem to require comment. Arabic terms are frequently used without adequate explanation. Statements by other writers are sometimes quoted or referred to without any indication of the author's opinion regarding their accuracy. Occasionally there is a sentence which is liable to misinterpretation. For the most part, however, the author's English is clear, direct and forceful. The book is provided with an index, a bibliography and an appendix containing the texts of the international agreements under which the Zone is governed.

F. R. Flournoy

St. Stephen's College

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Readings in European International Relations since 1879. Edited by W. Henry Cooke and Edith P. Stickney. New York and London, Harper & Brothers, 1931.—xxxiv, 1060 pp. $4.00.

There are few questions more significant to the public welfare than the removal of deep-seated animosities which characterize the present relations of nations. The withholding, as well as the deliberate falsification, of reports of government policies preceding and during the World War created misunderstandings which make a satisfactory adjustment of international relations almost impossible today. The correction of these false impressions is a prerequisite for a more stable world order. The volume under review makes an unusual contribution to this work.

The publication during the past decade of more complete records from the secret archives of European governments marked a significant change in the study of international affairs by specialists. Many of these documents have been translated and they are here presented in a form that will enable students and other groups to see what really took place in the foreign offices of Europe.

The scheme of the volume is to reproduce without interpretation or alteration extracts from important treaties, official reports, minutes of conferences, dispatches and private views that show the secret policies supported by governments. The restraint of the editors in presenting this material, with only a brief explanation to give each document a setting in point of time, makes it possible and necessary for the reader to form his own judgment regarding certain issues. Wherever possible contrasting or contradictory views of governments are presented to bring out different sides of an international conflict.

The numerous documents included in this volume of readings are classified under five general headings: Part I, Diplomatic Europe, 1879-1914; Part II, The Immediate Origins of the War, June-August, 1914; Part III, The War, 1914-1918; Part IV, The Settlement, 1917-1920; Part V, Reorientation. An enumeration of a few outstanding events of the past fifty years of international relations will indicate the type of source material made available to the student of international affairs: the rise and strengthening of the Triple Alliance and the Triple Entente; the efforts to avert war such as the Hague Conferences of 1899 and 1907, the Conference of Ambassadors in 1912, the Haldane and House Missions to Ger-

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many; the conflicts over Morocco; the Balkan Wars; efforts to create a greater Serbia, culminating in the assassination of Archduke Ferdinand of Austria; the Austrian ultimatum and the Serbian reply; the mobilization of national armies and the declaration of war; the shift of Italy and Rumania from the Triple Alliance to the Triple Entente, giving rise to new problems set forth in secret treaties; the entrance of the United States into the war; the attempted settlement at Versailles; the organization of the League of Nations and the World Court; the challenge of Russia; efforts to liquidate the war; the "outlawry of war".

The vast supply of documents available for publication and the limited space of one volume created a problem of selecting the most important materials for this work. The editors were aided by historical perspective in the choice of prewar records of diplomacy. They were not so fortunate in their selection of postwar materials. Time has not marked clearly enough the most significant events of the past decade to enable the editors to do more than present types of problems and proposed solutions which have engaged contemporary leaders.

The primary aim of the editors was the preparation of a collection of official documents which would be "valuable for use in teaching a college course in European history". It would be better perhaps to say that this volume may be used as a guide by all who seek a more realistic approach to foreign affairs and wish an objective presentation of facts that are essential for an understanding of European international relations during the past fifty years.

WALDO E. STEPHENS

COLUMBIA UNIVERSITY

American Public Finance and Taxation. By WILLIAM J. SHULTZ. New York, Prentice-Hall, Inc., 1931.—xxiii, 635 pp. $5.00.

Among the excellent new textbooks in economics is *American Public Finance and Taxation* by William J. Shultz. Yet to call it a work on economics is hardly adequate to its variety of approach. Public finance, as the author has explained (p. 3), is a synthetic subject, pieced together from several allied sciences and arts—financial history, statistics, economic theory, sociology, constitutional law and public administration. More space is given than in other textbooks to the constitutional and administrative aspects of taxation and

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to the interrelations of federal, state and local finance. The author is learned in all these branches and maintains an excellent balance and proportion in respect to these different divisions of his subject. His attitude is both realistic and critical; he seems to be on the whole free from bias and subjection to "first principles" that are actually unproved generalizations. For example, it has been authoritatively asserted that "government is an industry of increasing cost". Dr. Shultz in a brief analysis (pp. 24-25) shows that different governmental activities should be differentiated as to the principle of cost, some increasing and some diminishing in unit costs with the expansion of operations. This is only one of many instances in which the author questions accepted generalizations and points the way to a more critical and fruitful analysis.

However, it is in all probability mentally impossible for any two students of a subject to agree in all particulars; and a reviewer is under moral obligation to differ from the author in at least a few details. It would seem that Dr. Shultz has not fully emancipated himself from certain accepted generalizations which may, on further thought, be viewed as "stereotypes". One of these is the distinction between the public and the private economy. The author designates "general public benefit" as the major purpose of governmental activity as distinct from "private benefit" (pp. 60, 61). The reviewer holds that both governmental and individual activity aim at the service of individuals, that the distinction between the "public" and the "individual" should be translated into the public and the individuals, in which case the distinction would disappear. The true difference between the public and the private economy, in the opinion of the reviewer, is to be determined through the study of social psychology. What is called the private economy is only a peculiar habit pattern or type of conditioning among individuals; and what is called the public economy, a different variety of habit or conditioning of particular persons.

This lack of stress on social psychology accounts perhaps for another phase of the book in which one might object to the author's approach. Reference is made to the subject of government operation of business enterprise, such as utilities. If the profit motive, as the author assumes, is necessary to efficiency, then public ownership, as he suggests, is a very dubious experiment. But if the profit motive is merely a contingent form of historic conditioning, then public enterprise has different grounds for experiment. The reports of lowered or disappearing local taxes in smaller Middle Western towns

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that own their electric utilities suggest that this topic might be given more detailed analysis by Dr. Shultz.

Dr. Shultz, like many other students of public finance, has come to feel the great importance of the administrative aspects of the subject. For that reason, perhaps, he tends to subordinate the ethical to the administrative. He, therefore, stresses taxes on business rather than taxes on personal incomes. The ability theory of taxation, he holds, is based on principles that are as yet unproved. And he favors a moderate progression because "regressive taxation directly affronts common-sense standards of fiscal justice."

HARVEY W. PECK

SYRACUSE UNIVERSITY

Employment and Unemployment in Pre-war and Soviet Russia. Report Submitted to the World Social Economic Congress, Amsterdam, August 1931. By SUSAN M. KINGSBURY and MILDRED FAIRCHILD. New York, International Industrial Relations Association, 1931.—132 pp.

Social Economic Planning in the Union of Soviet Socialist Republics. Report of Delegation from the U. S. S. R to the World Social Economic Congress, Amsterdam, August 1931. By V. V. OBOLENSKY-OSSINSKY and others. New York, International Industrial Relations Association, 1931.—168 pp.

The report of Miss Kingsbury and Miss Fairchild consists largely of a series of tables of statistical data. These tables, most of which are taken from official Soviet publications, present valuable information in concise form. The book gives figures on prewar wages compared with wages at different periods since the inauguration of the Soviet régime, on prewar and present-day labor productivity, on prewar gross production and production in various industries during recent years, together with data on the rise and fall of unemployment in the Soviet Union.

The authors are somewhat uncritical in their use of data from Soviet sources. It is true that no other data are available and that Soviet statistics may be utilized to advantage if the reader is warned of the necessity for discounting them. While the authors recognize the difficulty in estimating changes in the standard of living, they nevertheless accept almost without qualification the Soviet estimate of a forty per cent increase in wages in 1929-30 compared with

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1913. In the same way they are very much impressed by the coincidence of the Soviet computation of a thirty-eight per cent increase in labor productivity with this estimated forty per cent increase in real wages. Actually, however, the difficulty in computing the purchasing power of wages together with the factor of changes in the quality of goods produced results in a margin of probable error in both figures of some fifty per cent.

The authors show that unemployment after the Revolution increased to a maximum of approximately one and three-quarters million persons in 1929, but thereafter decreased to a low of about six hundred thirty thousand persons in 1930, at which time unemployment insurance was abolished by the Soviet government on the very reasonable ground that net unemployment had ceased to exist. It was contended that those persons who were still listed as unemployed were persons who could be employed if they were shifted to the proper trades or to the proper geographical area. The authors believe that this probably demonstrates that the Communists are right in declaring unemployment to be a disease of capitalism. With this conclusion of the authors the reviewer is in accord.

The report by the Soviet delegation is divided into four parts, dealing with the structure and methods of the economic planning system, the operation of the system, the planning and development of agriculture and the place of labor in Soviet planned economy. Citizen Ossinsky, the chief of the Soviet delegation, naturally takes a great deal of satisfaction in pointing out the increases in industrial production in Soviet Russia during the years when like production in capitalistic countries has been so catastrophically declining. The reviewer agrees with him that this circumstance is of an importance which can hardly be overestimated. Nevertheless, the picture of economic life in the Soviet Union which is presented is both out of focus and misleading. It is obvious, now, that whatever may be the eventual advantages of the collectivization of agriculture, it has not yet raised the standard of living of the peasant, but instead in some districts has created almost famine conditions. It is also now well known that in the last two or three years the supply of food to the urban workers has been poorer than it was, say, in 1927.

The report of the Soviet delegation is thus characteristic of almost all Soviet analyses of the present economic situation. The remarkable achievements in the collectivization of agriculture and in the construction of industrial capital equipment during the past four years are at once assumed to have resulted in great improvements

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in the standard of living. This simply is not so. If the population can endure the present privations until the remarkable capital construction of the last few years comes to real fructification it would appear that the standard of living must markedly improve. To claim that the improved standard has already taken effect tends to destroy all faith in Soviet statistics, whereas in fact they have, in many respects, a considerable value.

CALVIN B. HOOVER

DUKE UNIVERSITY

Some Aspects of the Theories and Workings of Constitutional Law. By W. P. M. KENNEDY. New York, The Macmillan Company, 1932.—xiv, 142 pp. $1.50.

This book embodies the Fred Morgan Kirby lectures delivered at Lafayette College in 1931. Professor Kennedy's remark at the beginning of his fourth chapter might well serve as a text for the whole work: "If you wish to study real Canadianism, I think you will do it best in the realm of politics and law." The Canadian community is not a unit as England is. Canada consists of four quite different geographic areas separated from one another by broad and difficult barriers and bound together at great expense by railroads which run east and west. Great as are the variations, moreover, between conditions in the prairie provinces and in the maritime group, they sink into insignificance when compared with the differences between the cultures of the English-speaking and French-speaking Canadians. The French remain "a group culturally apart from the rest of Canada, from the rest of North America; indeed from the rest of the world." In Canadian politics and law is to be found that collection of customs and legal enactments which may well be called the Canadian code and which in essense is a *modus vivendi* making it possible for four geographic sections and two quite distinct and sometimes antagonistic cultures to live together in peace.

Professor Kennedy takes a justifiable pride in this Canadian code. "Canada . . . is one of the most important political laboratories in existence. It has passed from a paternal and theocratic French settlement, from colonial government, from self-government, to full responsible government and nationhood, and it is the first federation in the world which has successfully reconciled the cabinet system inherited from Great Britain with the federal principle borrowed from [the United States]." In spite of the fact that "all has not

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been plain sailing", the Canadian code "works". Yet Professor Kennedy does not aim at laudation or defense. His purpose is to explain. Reading this book is an experience akin to that of sitting by a Canadian fireside and listening to a candid and intimate discussion of family affairs. In this volume the American can come to grips with the realities behind the Canadian scene. He can get a sense of the puzzling problems of the present and of the uncertainty of the future. At the end he will be amazed at the amount of material packed into one hundred and thirty-three readable pages.

But the most striking of Professor Kennedy's four chapters is the one which deals with the changing legal philosophy which lies behind the British Empire and the later British Commonwealth of Nations. Whence came this new Commonwealth? With convincing logic Professor Kennedy develops his point that it did not originate in English thinking.

> In Quebec in 1864 were laid not merely the foundations of the modern Dominion of Canada, but, what is of greater importance, those of a new empire. . . . Here at Quebec is a new note: the empire is worth preserving as a great set of community nations. Here is a social note—here is the adumbration of a commonwealth to take the place of an hierarchal legal system. The years have emphasized that faith; but I would have you recall that that faith was a *colonial* faith, born in Canada between 1829 and 1864; born and lived and nurtured, until fortunately it at length received a hearing in Great Britain, as *laissez faire* legal theory gave place to what Dicey called the collective principle in law; until Disraeli declared that the colonies demanded the preservation of the empire—"they had decided that the empire shall not be destroyed".

RALPH H. GABRIEL

YALE UNIVERSITY

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BOOK NOTES

The previously established practice of the National Industrial Conference Board of publishing an annual survey of world economic conditions again displays its usefulness in *A Picture of World Economic Conditions at the Beginning of 1932* (New York, National Industrial Conference Board, Inc., 1932; xvi, 286 pp. $3.00). Since the book is largely a compilation, a review of it becomes chiefly descriptive. In this volume Part I begins with a general survey which briefly covers recent financial disturbances, international trade, the international movement of gold, and "the outlook for 1932". It proceeds to devote chapters to leading countries, such as Great Britain, Germany, France, the United States, and to some minor ones. The reason for the omission of Japan in this part is not indicated. Part II consists of special reports from the Board's foreign correspondents, who are mostly prominent business men. The subjects of these reports are rather scattered and haphazard; they detract from the unity of the book. The volume appeared in April 1932. Those who use it might wish it could have appeared more promptly after the close of the preceding year, but economists who have had experience with the preparation of such annual handbooks will recognize the many difficulties in such a time-task, especially in the way of tardiness of official statistics of various countries. The style in Part I is at places heavily laden with statistics, which could well be placed in tables where the intelligent reader could grasp them even more readily than when made into sentences of figures. But the style is always clear. The documentation is very inadequate, whereas it probably could easily have been made nearly complete. Apparently no attempt is made to treat the economic developments in any one country exhaustively or even comprehensively, and in the lack of basic statistical facts the volume falls short of the usefulness of such a handbook as the Foreign Countries volume of the *Commerce Yearbook* published by the United States Department of Commerce. On the other hand, the present work singles out high lights in current economic and politico-economic history of the countries, and the compilers, while avoiding (probably wisely) incursions into economic theory and implications of principles or of solutions of problems, do offer at places brief and seasoned explanations of

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certain phenomena and their effects. For example, relationships between currency and international trade are mentioned. Altogether the book is very useful to the student and the business man in obtaining a summary review of recent economic developments, and it also has some usefulness as a current reference work and perhaps also as a key for future economic historians, as time goes on and the series is extended. The great virtue of the publication is that it deals with world economic developments as a whole, showing the interaction of one upon another and, thus, along with other books, helping to emphasize the obvious fact that there exists a world economy, and that our major economic problems cannot be fully solved except in international terms and through international coördination. It well supports the following statements by Mr. Magnus W. Alexander in the preface: "In every country an important body of public opinion doubts that any improvement in economic conditions within the nation is possible until vexing problems of international relations are settled. . . . The events of the past year have demonstrated perhaps more clearly than ever before that the nations of the world, whatever their national policies and aspirations, are enmeshed in a network of international economic relationships."—JOHN DONALDSON, George Washington University.

The second of the four volumes that Professor I. L. Sharfman is writing upon the Interstate Commerce Commission (*The Interstate Commerce Commission.* Part II; New York, The Commonwealth Fund, 1931; xiv, 533 pp. $4.50) is even more meritorious than was the first. Part I (reviewed in the POLITICAL SCIENCE QUARTERLY for September 1931, p. 477) dealt with the legislative authority of the Commission and was necessarily mainly a statement of the provisions of the Interstate Commerce Act and of their evolution, while this is largely constructive in character, being both a statement and a discussion of "The Scope of the Commission's Jurisdiction". The volume deals with three subjects: "Railroad Regulation and the Control of Allied Utilities", "The Assertion of Power over Interstate Commerce", "The Exercise of Administrative Discretion", these three subjects constituting chapters 8, 9 and 10 of the seventeen that will be comprised in the four volumes. The discussion is thorough, detailed and judicial in tone, and in the "Summary and Conclusion" at the end of each chapter the author presents the tendencies of regulation and passes judgment upon the legislation enacted by Congress and the administrative policy followed by the Commission. Professor Sharfman finds little to criticize in the

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development of regulation by the Commission. Likewise he finds that "the judicial restrictions imposed upon the exercise of administrative discretion tend to be confined, in all their varied manifestations, to questions of legal power", the discretionary authority of the Commission having been "on the whole free from judicial review". The author is, however, somewhat concerned (and properly so) about the danger of legislative and executive limitation of the Commission's independence, and he cites several instances of political and sectional influences affecting the nomination and confirmation of members of the Commission. In addition to the unwise legislative encroachment upon the Commission's administrative discretion made by the Hock-Smith Resolution of January 30, 1925, several bills have been considered in Congress which if enacted would have inaugurated a policy of legislative instead of administrative regulation of railroads. This "Study in Administrative Law and Procedure" under the auspices of the Legal Research Committee of the Commonwealth Fund is most timely and is being admirably done.—EMORY R. JOHNSON, University of Pennsylvania.

Mr. E. D. McCallum's description of *The Iron and Steel Industry in the United States* (London, P. S. King & Son, Ltd., 1931; 333 pp. 12s. 6d.) is evidently intended for English readers. Information available in well known sources is ably and clearly summarized in chapters on the importance, growth and geographical distribution of the industry, the processes of manufacture, the structure of the industry, the combination movement, the mechanism of marketing, labor conditions, relations between employers and employed and rationalization. The book is subtitled "a study in industrial organization" but as such it offers little that is new in the matter of method. The chapter headings indicate that the broad arrangement of the work follows conventional lines. The description of the physical process of manufacture is disproportionately long and that on rationalization is something of a basket for the fragments that remain. At many points throughout the study, however, Mr. McCallum makes more use of theoretical analysis than is usual is such general descriptive works. But concerning the most outstanding economic characteristic of the industry, viz., the relatively small number of firms in many of its branches, he has little to say. He concludes that the industry is carried on under conditions of monopolistic competition and that a few producers control the price of steel through agreements, understandings and marketing devices (such as the "Pittsburgh plus" practice) but also

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holds that the economies of large-scale production have, through price competition, resulted in a decline in the price of steel products relatively to the general price level. The extent to which the experience of the industry affords information concerning the operation of the market under monopolistic competition, the determinants of price and production policy, and the nature of the incentives to improvement of methods of production under such conditions are passed by. The author is occasionally uncritical of data: he accepts the claims of most great employers of labor in the industry that prohibition has increased the efficiency of labor as "strong presumptive evidence that its enactment has added greatly to the economic and social wellbeing of the country" (p. 29). The payment of a bonus on profits of over one and one-half million dollars to the president of the Bethlehem Steel Corporation he cites as an example of adjustment of remuneration to efficiency, commenting merely that no maximum is set to the rewards permitted. At a number of points considerable and unsupported assumptions concerning the high efficiency of the industry are implied: and he overemphasizes his claim that the importance of capital relative to labor and the nature of the technical methods of production obstruct more than in most other manufacturing industries the utilization of the results of recent research in industrial fatigue and industrial psychology.—ARTHUR ROBERT BURNS, Columbia University.

Perhaps the greatest political achievement of modern times is the rise of Japan from a hermit kingdom to a world power within a short span of three-score years. Many a western historian or student of international relations has attempted to chronicle that marvelous story but the task remains still unfinished. *Awakening Japan: The Diary of A German Doctor*, by Erwin Baelz (edited by Toku Baelz; translated by Eden and Cedar Paul; New York, The Viking Press, 1932; xvii, 406 pp. $5.00), answers the timely need by giving us a penetrating human insight into those epoch-making transformations. Dr. Baelz went to Japan in 1876 and lived there until 1905, serving as a professor of medicine at Tokyo and a physician to the makers of modern Japan and to the imperial household. He found Japan in the twilight of feudalism and saw her going through the thirty years of determined struggle until she became a recognized world power. It was his privilege to meet and to come to know intimately Japan's leading statesmen as well as a galaxy of diplomats and representatives of many nations. *Awakening Japan* is a posthumous publication of his diaries, letters and papers on various subjects, mostly written

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during those momentous years, ably edited by his son and well translated by Eden and Cedar Paul. In it one looks in vain for sensational revelations or new materials for unwritten history; rather one faces a panorama of captivating events and fascinating conversations together with enlightening comments. It is a record of a master scientific mind with a critical but sympathetic insight and a sensitive but balanced judgment as he applies, day after day, a psychological stethoscope upon the adolescent Japan and gives a series of intimate sidelights on the history of her rapid growth. To the student of government and international relations, especially revealing are his observations on men and events after Japan's victory in the Sino-Japanese War, which Dr. Baelz believed spelled the turning-point in Japan's history, both internally and externally, and through the Russo-Japanese War. Moreover, through his marriage with a cultured Japanese woman and through hard study, Dr. Baelz gained a profound insight into the cultural life of the Japanese people and in *Awakening Japan* is also found a wealth of information concerning Japan's cultural heritage as it is actually revealed in her prevailing traditions and customs. In short, with Dr. Baelz's diary as his fireside companion, one finds the difficult history of Japan and her international relations during 1876-1905 transformed into a pleasant pastime of following word-pictures as they come and go from the lips of a master physician with his hand upon the pulse of the awakening Japan. Incidentally, throughout the book are found stimulating observations on the growing hatred of Germany in Japan and in other countries. The book is liberally indexed. Very annoying to a Japanese reader, however, are numerous misspelled Japanese names.—ROY H. AKAGI, Columbia University.

A study of inflation—*Exchange, Prices, and Production in Hyper-Inflation: Germany, 1920-1923* (Princeton, Princeton University Press, 1930; xix, 362 pp. $3.50) by Frank D. Graham—that arrives at the conclusion that the balance of material gains and losses attributable to it is "distinctly on the side of gains", merits the attention of a generation that is rather consciously toying with the idea of inflationary policies as a remedy to world-wide depression. Graham is, of course, thoroughly aware of the many unique elements in the German example but he concludes that while "one would like to find a buttress for the policy of stable money in a demonstration that, just as in ethics, so also in the realm of economics, abuse of the currency could work nothing but ill", yet the facts "lie the other way". Parts II and III of the Princeton study seem rather over-

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elaborate in their theoretical and statistical treatment in view of the limitations of the data which are admitted by the author. To a reader without technical interest in questions of monetary theory, Parts I and IV on the historical background and the effects of inflation on the German economy will be of considerable interest. The introductory chapter gives an excellent summary of the general background of the entire episode. Professor Graham has in the past given hostages to the view that the "possibility" of payment and transfer of reparation is beyond scientific doubt, and in this volume the search for evidence to bolster up this opinion is continued to the confident conclusion that in this question "indisputable fact is laying an ardent controversy quietly to sleep" (p. 325). The "indisputable" facts are those of 1929 and 1930, while the reviewer and the readers of the study enjoy the easy *ex post facto* wisdom of those who are familiar with the Lausanne agreements.—HARRY D. GIDEONSE, University of Chicago.

The history of the protracted currency disorders of Chile, as set forth in *Monetary Inflation in Chile*, by F. W. Fetter (Princeton, Princeton University Press, 1931; xiii, 213 pp. $2.50), is chiefly remarkable for three things. One is the duration of the disorders themselves. They continued, with one interruption of three years, from 1878 to 1926—a record which has few rivals. The second is the fact that though chronic, the disorders never became unmanageably severe, and never led into the nightmare type of situation made only too familiar in postwar Europe. The peso dropped from a value of roughly forty English pence to roughly six, but required half a century to accomplish this fall, and at no time did its depreciation produce anything like economic paralysis within the country. The third is the fact that the depreciation took place in the face of balanced governmental budgets and large gold reserves, so that the usual reasons for currency inflation were here entirely lacking. The explanation Dr. Fetter offers for the progressive growth of the depreciation itself is primarily that the dominant political element in the country was the large land-holders, who were also heavily indebted. Like the American farmer under not dissimilar circumstances, they therefore stood to gain from depreciation, and inevitably became advocates of "cheap money". The book itself is carefully done and well written, and is a substantial contribution to the annals of Chilean national growth. If it adds little to the relevant branches of existing economic theory, the blame lies chiefly in the fact that human history tends to repeat itself; and in the fact that

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the paucity of available statistics compelled the author to place his chief reliance on legislative and literary materials, rather than on detailed quantitative evidence.—JAMES W. ANGELL.

Considerable light is thrown into the dark recesses of China's financial problem by Professor Arthur Gardiner Coons' volume entitled *The Foreign Public Debt of China* (Philadelphia, University of Pennsylvania Press, 1930; xi, 251 pp. $3.00). The treatment is broader than might be inferred from the title, for after analyzing historically the various secured and unsecured foreign loans, the author attempts an appraisal of China's capacity to pay, in the course of which he surveys the internal indebtedness, the public revenues and the trade and industrial development of the country. The overwhelming importance of the political factor is stressed and the conclusion is reached that "whatever group succeeds in uniting China, if in point of time that success is not too far removed, can, if it will, meet China's foreign indebtedness."—ROBERT MURRAY HAIG.

"Canada within the Navigation System" is the theme of Dr. Gerald S. Graham's *British Policy and Canada, 1774-1791* (London, New York, Toronto, Longmans, Green and Co., 1930; xii, 161 pp. $4.20), published in the Imperial Studies series, of which Professor A. P. Newton is general editor. The first four chapters, dealing with phases of Canadian history before 1783, are introductory, for it was not till the close of the American Revolution that Canada came fairly within the scope of British commercial policy. The subjects with which the author is especially concerned are the attempt to substitute Canada for the New England and middle states of the new American Union as sources of supply for the British West Indies, the efforts made by the British government to procure naval stores from Canada, and "the alliance of diplomacy and commerce in the grand but visionary project of a vast American market zone, linked by the Canadian 'vestibule' to England." With regard to this last feature of British policy Dr. Graham quotes from an interesting anonymous document among Pitt's papers to the effect that the settlers in the "back country" of the United States will be dependent commercially on Canada. "The only object Great Britain can have in retaining Canada in a commercial view is, that as Canada extends all along the back of America, it will at all times secure to Great Britain a sale of her manufactures, and oblige the government of America to be moderate in their duties, otherwise the goods will be smuggled in upon them." During the period with which this study is concerned British commercial policy regarding Canada must be pronounced a

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failure in all its major aims. As to original research in primary sources the author conforms to the high standard set by earlier volumes of the Imperial Studies, and he has brought to light some significant facts. Unfortunately, he makes some mistakes that are scarcely excusable in a historical monograph. He falls into chronological confusion regarding Pitt's American Intercourse Bill, which was introduced by Pitt as Chancellor of the Exchequer in 1783, not as Prime Minister in 1784; and his opinion that Kentucky and Tennessee "delayed joining the Confederation beyond the mountains" betrays a lack of elementary knowledge of their status at the time. When the federal union came into existence Kentucky and Tennessee were parts of Virginia and North Carolina, respectively, and as such were included in the union.—R. L. SCHUYLER.

It is no easy task to present an intelligent and comprehensive account of the tremendously significant events that have taken place in the years since the catastrophe of the Great War. The political, economic and social changes have been so far-reaching, they have occurred with such startling rapidity that it is not possible, as yet, to evaluate them. It is, however, distinctly worth while to pause, now and then, in the midst of the swiftly moving tide of events to try to get our bearings. This is what James H. Powers has done in *Years of Tumult: The World since 1918* (New York, W. W. Norton & Company, Inc., 1932; 345 pp. $3.00). The result is a forceful, well written and on the whole accurate survey of these momentous years. The author's critical analysis of the peace settlements is in keeping with the best informed opinion today. He brings out clearly the financial-political policies of France and England in the postwar period and discloses accurately the clash of French and Italian policies in Europe. His analysis of the internal problems of the various countries is generally satisfactory. The book is marred by occasional misstatements and doubtful interpretations. The author accepts without question the view first advanced by Maynard Keynes that President Wilson was "bamboozled" by Lloyd George and Clemenceau at the Peace Conference. He fails to bring out the influence of public opinion in the Allied countries in forcing a vindictive peace. His division of the world into "three belts of policy" is suggestive but too sweeping. The statement that Bulgaria was increased in size and population by the peace settlements is not true (p. 277). The Imperial Conference of 1921 was not the first Imperial Conference (p. 165). The statement concerning the impotence of the League of Nations in the Corfu incident (p. 293) is

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open to question. The treatment of the Far Eastern situation is inadequate. The faults of the book, however, are distinctly outweighed by its merits and the author is to be congratulated upon his sane and clear treatment of a complicated subject.—NELSON P. MEAD, College of the City of New York.

Mr. Norman Thomas has recently published two books on present-day problems, entitled *America's Way Out: A Program for Democracy* (New York, The Macmillan Company, 1931; ix, 324 pp. $2.50) and *As I See It* (New York, The Macmillan Company, 1932; ix, 173 pp. $2.00). In the first of these volumes, Mr. Thomas states his purpose as an "attempt to present the necessity for socialism in our machine civilization, a philosophy for socialism, a tentative program for socialism, a discussion of the necessary organization to carry it out, and grounds for hope that human nature does not make the task impossible." The earlier chapters repeat the ironical picture of capitalistic chaos which has been the context of much of Mr. Thomas's past lecturing and writing. They include also a thumb-nail history of socialism, a chapter on communism in Russia, an account of the war-threatening manifestations of nationalism and a restatement of the democratic ideal. Two later chapters are on labor and political organization in the United States. All this may be regarded as apropos to "the necessity for socialism", but it consumes so large a share of the book as to reduce the philosophy and program of socialism to insignificant proportions. The necessity for socialism is apparently established in Mr. Thomas's mind by the chaos, conflict and injustice which he sees in the contemporary scene. Against these he develops his socialist philosophy, which turns out to be only a disjointed discussion of social ideals vaguely supposed to be capable of attainment under a régime of good will and "planning". It is, however, at the discussion of "socializing industry" that the reader discovers how completely Mr. Thomas falls short of making a strong case. Abjuring dogmatism, he merely repeats Hobson's formula about the socialization of "key" and "routinized" industries and establishes by bald assertion the point that "public control . . . probably cannot exist with private ownership". The problems of administering industries under socialism are treated in four brief paragraphs covering one page. Like all of Mr. Thomas's writing and speaking, the book has merit as high-minded criticism of the ideals and practices current in our contemporary civilization. The primary shortcoming of the book is the absence of sustained analysis. To one unacquainted with

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socialist thought the unsystematic exposition would make the case for socialism neither intelligible nor convincing. *As I See It* brings together a group of Mr. Thomas's essays on current questions. The dominant note is the critical urgency of facing the two problems of economic collapse and impending wars. "We drift, and we drift toward disaster" (p. 166). The topical material includes discussions of disarmament, the plight of the farmers, the political corruption of New York City, unemployment, government measures for ending the depression and many others. An interesting chapter is that in which Mr. Thomas comments upon the plans of Mr. Swope, Mr. Beard and Mr. Chase for reorganizing the control of industry. The message is that capitalism has broken down, spiritually and economically, and must be replaced by socialism. These two books appear to define the limitations of Mr. Thomas's mind. He appears unable to think constructively, to throw any light upon the process by which our sadly humbled economic system can be transformed.—PAUL T. HOMAN, Cornell University.

A History of Socialism, by S. F. Markham (New York, The Macmillan Company, 1931; viii, 328 pp. $2.75), presents an excellent treatment of the history of socialist doctrines and movements from the more or less conventional standpoint of the social-minded intellectual. The book, which is a thoroughgoing revision of Thomas Kirkup's well known *History of Socialism*, takes us through the successive stages of socialist history beginning with the Robert Owen movement and devotes about half of the space to developments since the Great War. The reviewer has nothing but admiration for the author's accurate presentation of the facts and for his thoroughgoing exposition of the struggle of doctrines within the socialist and the communist movements. Also the reader will be greatly benefited by the scope of the book which brings between two covers an admirable account of the flow of events in as widely scattered situations as China, the British Empire and the United States. However, the reviewer misses in the book a true realistic touch. One could scarcely gather from the author's fine but conventional account of the history of socialism in Germany why the once powerful Social Democratic Party of Germany should now be struggling for sheer survival against an ever-gathering avalanche of middle-class Fascism. Nor does one gather from the author's exposition that there is anything like a socio-ideological differentiation within the progressive labor movement between trade unionism with its practical mentality and the ideological leaders *par excellence* recruited from the upper

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and middle classes. It is the reviewer's personal opinion that a history of socialism and labor will have to be rewritten with special reference to the more basic social set-up in the countries of western culture, in which the dominant element, as we see it now, is a middle class economically harassed and pushed to the background but unwilling to die by merging into the ranks of the proletariat and therefore insistent on effecting a comeback under the flag of Fascism with the spear-head of its attack directed against organized labor. Notwithstanding the above strictures, the reviewer does not wish to convey the impression that he considers the book by Mr. Markham in any degree a failure. On the contrary, it is to be recommended as one of the best expositions of the subject in the English language. —S. PERLMAN, University of Wisconsin.

Advisory Economic Councils by Lewis L. Lorwin (Washington, The Brookings Institution, 1931; x, 84 pp. 50 cents) presents in brief compass the pertinent information concerning the development and present status of economic representation in Europe, particularly with reference to Germany and France. Viewing the existing economic councils as a product of the war, the author describes the political forces responsible for their appearance and surveys the deeper underlying causes found in the social and economic thinking of the prewar period. The treatment is summary. The author classifies the councils under three heads: the regulatory planning type, the representative advisory type and the appointed consultative type. It is the second variety that is considered in this pamphlet. The Provisional Economic Council of Germany and the National Economic Council of France are described with reference to their composition, operation and accomplishment. "The Councils in both countries have been useful as a result of their studies of economic problems, their educational work, and their advisory opinions to the government; but they have not been of much aid in the solution of the larger problems of our times," the author states. Of particular interest is Mr. Lorwin's discussion of the problems and possibilities of economic councils. How is the council to be constituted and what form is best suited to a given type of government? The author is of the opinion that "in countries where semi-dictatorships arise as a result of political and economic emergencies, the appointed consultative type of council is likely to supersede the representative-advisory type, as has happened in Germany." However, one might well go further and point out that whatever the nature of the government the economic council functions most effectively as a consultative

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agency. Experience has demonstrated that although the council may be intended and indeed formally constituted as a composite of national economic forces it operates habitually through small committees of experts. A substantial substructure of local and indigenous functional grouping into subordinate councils never having developed widely, none of the existing councils have been able to grow into significant representative bodies. The council recently instituted in Great Britain is of the appointed consultative variety. The proposed council for the United States would consist of a small group of expert advisers who would on occasion utilize the services of a larger body representing important economic interests. With industry in its present chaotic state and with trade associations so uneven in development the possibilities of accomplishing and the materials for attempting any adequate degree of economic representation seem very uncertain. Existing councils must justify their existence simply as advisory agencies. Their concern, moreover, has been with broad and general problems of a non-controversial nature. French and German experience is very enlightening in demonstrating the limitations of the economic council. Mr. Lorwin treats his problem with understanding. His booklet is timely and useful. For a general discussion of the subject it provides the most convenient single source of information in English regarding the main outlines of economic advisory councils, their background, operation and potentialities.—E. PENDLETON HERRING, Harvard University.

At last a fairly thorough account of judicial review in the United States has become available for Germans in a book by Dr. Heinrich Rommen entitled *Grundrechte, Gesetz und Richter in den Vereinigten Staaten von Nordamerika* (Münster, Aschendorffische Verlagsbuchhandlung, 1931; 141 pp. Rm. 5.75). Rommen gives the traditional and accepted doctrine of judicial review as we know it in the United States with a fair amount of historical and constitutional material to support it. Cases are cited with discretion according to good texts. How important a condition the English tradition of judicial integrity and leadership in opposing royal absolutism was for the early development of the right of judges to disregard laws made by the legislature if such laws conflicted with the "higher law" is properly emphasized, and the important precedent of reviewing colonial legislation in terms of colonial charters is at least mentioned. Rommen rightly calls attention to the importance of the bill of rights for the development of a doctrine of judicial supremacy and in explaining the genesis of these bills of rights he follows

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Jellinek's well known essay. In an appendix Rommen discusses critically the more recent use made of this judicial supremacy in interfering with labor legislation. A chapter comparing the power of judicial review in Australia, Canada and Ireland concludes the discussion. The author does not reach any definite conclusion concerning the desirability of judicial supremacy, but he does bring out fairly clearly what might be said for and against conferring so much power on the judicial branch of the government. The fundamental philosophical consideration of a law of nature, that is, the question whether justice is a product of right reasoning or of free decision, is not dealt with extensively, but the author seems to have a fairly definite notion of this metaphysical question. In short, Mr. Rommen has written a competent essay about the right of courts to review legislation in the United States. — CARL JOACHIM FRIEDRICH, Harvard University.

In *The Comte de Vergennes: European Phases of His American Diplomacy (1774-1780)* (Washington, Catholic University of America, 1932; 129 pp.), Dr. John J. Meng has added a monograph to the all too scarce available materials on the European phases of the American Revolution. His researches in the French archives have added still further proof that the struggle of the American colonies against England played an important rôle in European diplomacy and that French participation in the Revolution was in reality a phase of Anglo-French rivalry which had been in progress for generations. The author has divided his work into three parts. Chapter one deals with Vergennes' career prior to his appointment as minister of foreign affairs, chapter two is on Franco-Spanish coöperation and chapter three treats English isolation. The first part is a rather unsuccessful attempt to weave the early career of Vergennes with the general history of Europe. In fact the author almost loses his hero in the complications of the general history of Europe. Over one-third of the book is devoted to the background for the main thesis. This no doubt was important in the life of Vergennes and should be stressed in a general biography of Vergennes, but in a specialized work of this kind it seems very much out of proportion. The second part traces Vergennes' negotiations for the *Pacte de Famille* with Spain. The author emphasizes the skill with which Vergennes won the support of the Spanish government against England in spite of fearful odds. The early negotiations with the American colonies are also included in this chapter. The third and last is by far the best part of the work.

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In this the author discusses the negotiations with Holland, Russia and Denmark for the isolation of England. The author gives Vergennes, rather than Catherine of Russia, credit for the formation of the League of European powers but he admits (footnote, page 88) that this is not a new point of view. The reader acquainted with the published materials of this period will be disappointed in the amount of really new material which the author has obtained. The author's researches in the manuscript sources have been confined to the French archives. It seems to the reviewer that a complete picture of the work of Vergennes, even on one phase of his activities, should include an investigation of the materials in the archives of some of the other nations. There are a number of minor defects in the work which detract and rather annoy. Awkward sentences and typographical errors are numerous. Quotation marks are omitted in several places and the American colonies are referred to frequently as the United States.—J. E. SWAIN, Muhlenberg College.

In 1916, the Carnegie Endowment for International Peace brought out, under the editorship of Dr. James Brown Scott, a volume containing the sixteen cases which had up to that time been disposed of by the Permanent Court of Arbitration and International Commissions of Inquiry established under the Hague Convention for the Pacific Settlement of International Disputes. Dr. Scott has now edited a second volume, *The Hague Court Reports* (Second Series) (New York, Oxford University Press, 1931; l, 234 pp. $2.00) which contains the five matters submitted to the same international bodies since 1916. These reports are not elsewhere available in so convenient a form. Dr. Scott has contributed a valuable introduction which summarizes and comments upon the cases submitted. He also points out the respective rôles of the Permanent Court of Arbitration and the Permanent Court of International Justice. The cases included in this volume contain points of importance and permanent interest. The Expropriated Religious Properties Case (Great Britain, France and Spain *vs.* Portugal) deals with the question of confiscation of private property. The French claims against Peru involve the problem of the legal effects of acts of *de facto* governments. The Norwegian Claims Case (Norway *vs.* United States) is concerned with the requisitioning of ships during the war. The Island of Palmas case was an interesting litigation between the Netherlands and the United States over the sovereignty of an uninteresting little island in the Pacific. The *Tubantia* case, referred to a Commission of Inquiry by the Netherlands and Ger-

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many, turned upon the sinking of a Dutch ship by a torpedo during the war. As in the former volume, each case is preceded by a brief syllabus. The text of the award is given in full as is the agreement submitting the case to the tribunal. All texts are in English, but where that was not the original language, the authentic text is reproduced in the Appendix. The volume concludes with an index. While attention is now largely focused upon the excellent work of the Permanent Court of International Justice, this volume is a permanent and timely reminder of the value of the older Hague Court which has by no means outlived its usefulness, a fact which is recognized by the reference to it in Article 1 of the Statute of its successor and companion in the machinery for the settlement of international disputes on a legal basis.—PHILIP C. JESSUP.

In the book *La Statistica dei salari industriali in Italia* (*Statistics on Industrial Wages in Italy*) (Padua, Cedam, 1931; viii, 97 pp. 15 lire) by Giovanni Lasorsa the author undertakes to analyze Italian wage data from the standpoint of their statistical adequacy, not from that of their social significance. In the introductory chapter an attempt is made to estimate the value of wages in terms of the food which is purchased therewith, but it is found that the choice of food is influenced too strongly by social habits to allow of an adequate evaluation of wages from the standpoint of physical subsistence. The analysis starts with the wage statistics of the insurance companies. The data collected by them are said to be only of limited value in the case of industry and of no value at all for agriculture. Next follows an examination of the wage data gathered by the Labor Inspection Office. The trend of wages in recent years is followed for various industries, but since the analysis is in terms of nominal wages, no significant conclusions can be drawn therefrom. It was possible to show, however, that wage contracts are respected in most cases. The Confederation of Industry compiles wage data only since 1927. Since that time there has been a steady decline in wages. The same is true for the wages of those employed in public works. In the last part of the book the author examines wages in the principal industrial centers, to wit, Milan, Bergamo, Brescia, Rome and Turin. It is revealed that in four-fifths of all industries real wages have fallen with regard to the 1922 level and in one-third of the cases even when compared to 1914. To the American reader the book under review is of scant interest since its primary objective is not the movement of wages in Italy but the adequacy of Italian wage data.—CARMEN HAIDER, New York City.

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